

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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ERIC W. PAYNE,

Plaintiff,

v.

Case No.: 10-cv-00679

DISTRICT OF COLUMBIA, et al., (RWR)

Defendants.

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Friday, February 10, 2012

Washington, D.C.

Deposition of

ROBERT ANDARY,

the witness, called for examination by counsel for  
the plaintiff, pursuant to notice, held in the  
Temple Law Offices, 1229 15th Street, N.W.,  
Washington, D.C., beginning at 1:05 p.m.,  
before Kelly Susnowitz, a Notary Public in and for  
the District of Columbia, when were present on  
behalf of the respective parties:

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A P P E A R A N C E S

For the Plaintiff:

DONALD M. TEMPLE, ESQUIRE

Temple Law Offices

1229 15th Street, N.W.

Washington, D.C. 20005

202-628-1101

For the Defendants:

KEITH D. PARSONS, ESQUIRE

Office of the Attorney General

441 Fourth Street, N.W.

Sixth Floor

Washington, D.C. 20001

202-727-6247

ALSO PRESENT:

Eric W. Payne, Plaintiff

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C O N T E N T S

Examination by Counsel

Witness	Page
ROBERT ANDARY	
By:	
Mr. Temple	4,160
Mr. Parsons	139,163

E X H I B I T S

(Attached.)

Exhibit No.	Marked
1 Report of Investigation	12
2 Excerpts of Dr. Gandhi's Calendar	12
3 E-mails	12

1                   S T I P U L A T I O N S

2                   It is hereby stipulated and agreed by and  
3 between counsel present at this deposition and by  
4 the deponent that the reading and signing of this  
5 deposition is not waived.

6 Thereupon

7                   ROBERT ANDARY,  
8 the witness, called for examination by counsel for  
9 the plaintiff, and after having been first duly  
10 sworn by the Notary Public, was examined and  
11 testified as follows: I do.

12                  EXAMINATION BY COUNSEL FOR THE PLAINTIFF

13 BY MR. TEMPLE:

14                  Q. Good afternoon, Mr. Andary. I'm Donald  
15 Temple, for the record, and, momentarily, Mr.  
16 Payne will join us. Would you state your name for  
17 the record, please.

18                  A. Robert Andary.

19                  Q. Spell it, please.

20                  A. Last name is A-n-d-a-r-y.

21                  Q. I know you're a lawyer, but have you ever

1       been deposed before?

2           A.   Yes.

3           Q.   And how long ago was that?

4           A.   It was when I was working with the Federal  
5       Government, so it would have been prior to 2003.

6           Q.   Just to refresh your recollection, I'm  
7       going to ask you some questions.  If you don't  
8       understand the question, let me know.

9           A.   I will, definitely.

10          Q.   Yes or nos for the record.  If you need to  
11       take a break, let me know.  That's pretty much it.  
12       Can you state your educational background for me?

13          A.   I went to Georgetown University, graduated  
14       in 1969.  I went to the University of Virginia Law  
15       School and graduated in 1974.

16          Q.   Are you presently employed?

17          A.   No, I'm retired.

18          Q.   And you were employed with the Office of  
19       Chief Financial Office?

20          A.   Yes, among others.

21          Q.   When was that?

1           A. That was -- hold on one second. Towards  
2 the end of January 2008 until towards the end of  
3 October 2009.

4           Q. And prior to that, where did you work?

5           A. Well, I was -- again, I was in the retired  
6 status, but my previous job was with the Office of  
7 the Inspector General for the District of  
8 Columbia. I was Assistant Inspector General for  
9 Investigations.

10          Q. How long was that?

11          A. Three years.

12          Q. For what period of time?

13          A. It was 2003 until 2006.

14          Q. So you were retired between '06 and '08?

15          A. Right.

16          Q. And before that?

17          A. Before that, I was the Inspector General  
18 at the Government Printing Office.

19          Q. For what period of time?

20          A. Well, I retired in 2003 -- let me go back.

21 It was about -- I'm sorry, it was 1997 that I came

1       there.

2           Q.   What was your title when you worked at OCF  
3       Office?

4           A.   I was the director of the Office of  
5       Integrity and Oversight.   OIO, for short.

6           Q.   I just want to walk through that for a  
7       minute.   First of all, OIO Office, can you tell me  
8       for the record what it did?

9           A.   We had responsibility for investigations  
10       and for audits internally in the OCFO.   We also  
11       did background checks for new employees and,  
12       eventually, it morphed into doing background  
13       checks for all employees, which was ongoing when I  
14       left.   In addition, we did provide ethics training  
15       for everybody in the OCFO and that's essentially  
16       it.

17          Q.   The investigations that you were speaking  
18       about, internal, was there a particular person  
19       under you that was in charge of investigations?

20          A.   Yeah, Charles Fultz was the director of  
21       investigations, under me, and he went by Butch,

1 Butch Fultz.

2 Q. And you had a number of investigators, as  
3 well?

4 A. Yes, we had agents. He had eight.

5 Q. And would Mr. Pendleton have worked under  
6 Mr. Fultz?

7 A. Yes.

8 Q. Was there an organizational structure to  
9 the OIO Office, i.e., an investigative unit, audit  
10 unit, that they worked in?

11 A. That's correct. We were basically divided  
12 into two parts, the Audit Division and the  
13 Internal Security Division.

14 Q. Was there someone in charge of each  
15 particular division?

16 A. Yes.

17 Q. And who would have been in charge of the  
18 Audit Division?

19 A. An individual by the name of Muhammed  
20 Yusuf.

21 Q. And when you say audits, what are you



1 referring to?

2 A. Well, an audit is a review. The  
3 difference between an audit and an investigation  
4 is that an investigation looks at individuals.  
5 You investigate wrongdoing or, you know, crimes by  
6 individuals; whereas, an audit, looks at programs  
7 and they look at the efficiency of programs. They  
8 make recommendations to be more efficient and so  
9 forth. So audits are different. Audits are also  
10 guided by the yellow book, which are GAO standards  
11 for auditors, at least we did our audits according  
12 to the yellow book.

13 Q. Now, what was your chain of command, going  
14 up?

15 A. Angell Jacobs was the one I reported to  
16 directly and then, I guess Lucille Dickerson, too,  
17 I would say, even though I didn't deal with her as  
18 much as Angell. Angell would do my performance  
19 evaluations and so forth, and then Gandhi, above  
20 that.

21 (Mr. Payne walked in to the deposition

1 room.)

2 Q. Did you meet with Angell on a regular  
3 basis?

4 A. It wasn't regular, but we met a lot.

5 Q. How about Mr. Gandhi?

6 A. Well, we were supposed to meet on a  
7 regular basis, but it didn't always work out that  
8 way because he was so busy. But, theoretically,  
9 we would meet once a month, in a meeting that he  
10 would call, one-on-one, and we would discuss what  
11 was happening in the agency and I would have  
12 breakfast meetings with him when he wanted to. I  
13 guess, I went to about three or four of those.

14 Q. When you mentioned ethics training, what  
15 did that consist of, for what purposes?

16 A. Basically, it was our code of conduct. We  
17 would go over a code of conduct for the OCFO  
18 employees. We would give examples of situations  
19 and have discussions about how those situations  
20 would be approached and so forth. It was  
21 mandatory for all employees to do that.

1 Q. The code of conduct, actually, from what I  
2 recall, was that code of conduct revised at some  
3 point?

4 A. Yes, I was involved in that.

5 Q. Let me finish the questions. As a result  
6 of the tax scandal or something like that?

7 A. No. The code of conduct has always been  
8 there.

9 Q. I know it's been there, but it was revised  
10 as a result of that?

11 A. I'm not sure if that was the reason it was  
12 revised. It was revised because of the various  
13 issues that would come up in audits and  
14 investigations and it would be difficult to  
15 clearly cover them in the code of conduct that  
16 existed. So we worked hard to make it clearer and  
17 to cover more situations and so forth.

18 MR. TEMPLE: Let me just mark this  
19 document.

20 MR. PARSONS: At this point, because  
21 you're giving him a record that is marked

1 confidential, pursuant to a protective order, that  
2 we would mark this section of the deposition as  
3 confidential and if you would agree to a  
4 continuing agreement to mark every section where  
5 you get into the confidential document as  
6 confidential, then I won't have to say this every  
7 time.

8 MR. TEMPLE: Actually, I won't agree,  
9 because I'm marking it doesn't mean that I'm going  
10 to have content about -- or discussion at this  
11 point about the substance in this document. When  
12 we do, then obviously it's protected by court  
13 order and that will govern, but these immediate  
14 questions are not necessarily pertinent to that.  
15 But I do want to mark it.

16 (Deposition Exhibit Nos. 1, 2 and 3 were  
17 marked for identification.)

18 BY MR. TEMPLE:

19 Q. Do you recognize Exhibit 1?

20 A. I do recognize Exhibit 1.

21 Q. For the record, what is it?

1           A. It's a report of investigation and it's  
2           regarding case 2008-0154.

3           Q. And Exhibit 2, do you recognize that?

4           A. No, I don't. Well, let me look at the  
5           whole thing. Exhibit 2 appears to be a calendar.  
6           I don't think it's mine.

7           Q. It's not yours. For the record, those are  
8           excerpts from Mr. Gandhi's calendar.

9           A. Okay. I do not recognize it.

10          Q. And Exhibit 3, it's a series of e-mails.  
11          Why don't you take a moment to look at that.

12          A. I note that the first one is from me; it's  
13          very brief. I don't particularly recognize it,  
14          but I accept it on face value. The others, I  
15          appear to be covered on the second one.

16          Q. These are all, for the record, e-mails to  
17          and from you or that you're copied on.

18          A. There are two from me.

19          Q. Two are from you, I believe.

20          A. The second one is from Barbera. The third  
21          one is from Laverne Lee. The fourth one is from

1 Dan Keating. Oh, I see, there's a bunch more.

2 Okay. The fifth one is from me.

3 Q. Sir, we don't have to go through it now.

4 A. Yeah, this is the format that we had for  
5 our e-mail program and I see a lot of them bear my  
6 tag on them where it says Andary Executive  
7 Director, et cetera, and I recognize that is  
8 something I put on my e-mails. Is that good  
9 enough?

10 Q. Sure. What is the difference between OIO  
11 and the IG's Office?

12 A. Plenty of differences. The structure is  
13 fairly similar. The OIG has jurisdiction over the  
14 entire D.C. Government; whereas the OCFO has  
15 jurisdiction over the Office of the Chief  
16 Financial Offices. It's much more limited. The  
17 IG's Office is a creature of statute created by  
18 the D.C. council; whereas OIO is created by order  
19 of the Chief Financial Officer. It's a separate  
20 thing. The Inspector General has limited subpoena  
21 power. I do not have that. Their agents are

1 armed and mine are not. Those are some of the  
2 differences. The IG is set up with an Audit  
3 Division and an Investigations Division. I used  
4 to head the Investigations Division there. They  
5 also have a division that does reviews, not  
6 necessarily audits. I forget what it's called.  
7 And there's also a Medicaid Fraud Unit in the  
8 Inspector General's Office.

9 Q. Now, to what extent, if any, is there a  
10 policy governing the co-investigation of potential  
11 alleged impropriety between OIO and IG?

12 A. I don't think there's a written policy,  
13 but it's standard among investigators not to  
14 conduct dual investigations. Throughout my  
15 career, that's been the rule and there's a variety  
16 of reasons for that but, if the Inspector General  
17 were conducting an investigation of the same  
18 matter that I was either investigating or asked to  
19 investigate, I would defer to the Inspector  
20 General because of their greater powers and their  
21 greater jurisdiction.

1 Q. Now, relative to the OIO --

2 A. Can I just add to that?

3 Q. Please.

4 A. Sometimes we did joint investigations,  
5 where my agents would work with the Inspector  
6 General's agents, if it had to do with an OCFO  
7 matter, since our people were more familiar with  
8 the structure of the OCFO and the players  
9 involved.

10 Q. Now, to the extent that you reported to  
11 Angell and to Mr. Gandhi, to what extent was that  
12 investigative component of OIO, quote unquote,  
13 independent?

14 A. I made the calls as far as how the  
15 investigations would go, how they would be  
16 conducted. When I say I, I mean the OIO would,  
17 within the OIO. One of the important  
18 coordinations we would have is that, when I did an  
19 investigation and reported on it, it was up to  
20 Angell to determine what the administrative  
21 sanction, if any, should be, based on what we



1 found in the investigation. We just did the  
2 investigation. We didn't do the subsequent  
3 administrative action or firing or whatever, that  
4 was up to Angell. Does that answer your question?

5 Q. Well, I'm not so sure. Let me probe a  
6 little bit more. The review side of OIO, was that  
7 equally independent?

8 A. The audit side?

9 Q. Yes.

10 A. Supposedly it was, yes.

11 Q. You say, supposedly, why?

12 A. Well, towards the end, I think, Mr. Gandhi  
13 inserted himself into the process. He wanted to  
14 tell me how the report should be issued and  
15 whether the report should be issued and whether  
16 anything should be written down as a result of the  
17 audit, and I would not concede to that. What I  
18 did say -- the only concession I'd make is that,  
19 before we issued the report, I would brief him on  
20 the audit's findings so that he would know what  
21 they would be, and he was dissatisfied with that

1 and we never did resolve that issue.

2 Q. Let me make sure I understand you. In  
3 your experience, reviews, they were independent  
4 with other entities that you worked? Let me --  
5 strike that question. Should a review, in your  
6 professional opinion, be independent?

7 MR. PARSONS: Object to form.

8 Q. I'm sorry, should an audit, which is  
9 conducted under the auspices of OIO, should it be  
10 independent?

11 MR. PARSONS: Same objection.

12 Q. Noted. You can answer.

13 A. Independent of whom?

14 Q. And should it be, where you have reviewed,  
15 independent of the management --

16 MR. PARSONS: Same objection.

17 Q. -- such as Gandhi and Jacobs?

18 A. Shall I answer?

19 Q. You can answer, absolutely.

20 A. Yeah, it should be.

21 Q. Why is that?

1           A. Well, as I mentioned before, we try to  
2 follow audit standards and audit standards place a  
3 high priority on independence. And it's supposed  
4 to be an objective review using audit techniques.

5           Q. And to the extent that you wanted to  
6 memorialize an audit in writing, is that in a  
7 draft or final audit form?

8           A. Well, the way it works, the first version  
9 of the draft report is -- I'm sorry, the first  
10 version of an audit report is a draft report.  
11 That is shared with the auditee. The auditee is  
12 given an opportunity to give comments on their  
13 audit and, based on the comments, we would either  
14 go back to the audit, if there was some sort of  
15 error or objection that we agreed with, and change  
16 the audit report to reflect that or we would take  
17 the comments and put them in the audit report and  
18 issue the final report.

19           Q. Now, going a step further, Mr. Gandhi,  
20 you're saying, had a problem with the  
21 memorialization of certain information related to

1 audits?

2 MR. PARSONS: Objection to form.

3 A. Yes.

4 Q. What's the nature of the problem?

5 A. He was worried it would get out to the  
6 press and make him look bad, I think. I believe  
7 that's his problem.

8 Q. Was there a particular audit that came  
9 into play that you can think of in your  
10 discussions with him on this issue?

11 MR. PARSONS: Object to form.

12 Q. You can answer the question.

13 A. The first time the issue came up, it was  
14 as a result of an audit report that we had done.  
15 Actually, it wasn't an audit report. It was a  
16 management alert and a management alert is  
17 something where you see something that's an issue  
18 that needs to be resolved by management as soon as  
19 possible, so instead of having a full audit, you  
20 issue a management alert saying, here's the  
21 problem that you need to fix, and I think it was

1 one of those that caused me to have that  
2 discussion with Mr. Gandhi.

3 Q. How did it play out?

4 MR. PARSONS: Object to form.

5 Q. You can answer the question.

6 A. We didn't resolve it.

7 Q. What is it that you wanted and what is it  
8 that he wanted?

9 A. I wanted to issue my own audit reports.  
10 He wanted to tell me what I could write and what I  
11 can't.

12 Q. Did that present an ethical problem for  
13 you?

14 A. Not ethical so much, but it would violate  
15 the yellow book, in my view. The yellow book  
16 requires, if you do an audit, you issue a report;  
17 and not only that, I tried to foster independence,  
18 not complete IG-type independence, but him  
19 inserting himself into our process, to me, was an  
20 independence issue and I wouldn't do it.

21 Q. Do you know the extent to which -- was

1     that also a problem in the investigation side of  
2     the OIO Office, at all?

3           A.   The only problem with the Investigation  
4     Office, they were very careful not to interfere  
5     with my investigations, as far as I know.  Their  
6     only involvement would be to request an  
7     investigation if they got wind of an allegation  
8     such as the one from Mr. Graham involving Eric  
9     Payne.  I could be requested to do an  
10    investigation, but the actual process, no, they  
11    wouldn't get involved in that.

12          Q.   Now, I understand that you left the Office  
13    of OIO; is that correct?

14          A.   Yeah.

15          Q.   Were you asked to leave?

16          A.   I was asked for my resignation.

17          Q.   Did it have anything to do with your view  
18    as to the independence of the OIO Office regarding  
19    your reviews?

20          A.   Mr. Gandhi would not give me a reason for  
21    asking for my resignation beyond saying that he

1 was going to reorganize, that that was his intent,  
2 and he never did reorganize as far as OIO was  
3 concerned, but he would not tell me. And my --  
4 well, my opinion doesn't really matter.

5 Q. What is your opinion?

6 MR. PARSONS: Objection.

7 A. It was my opinion that it was based on the  
8 fact that we could not agree or he wasn't  
9 satisfied with my independence.

10 Q. Now, back to the code of conduct, the OIO  
11 code of conduct, did that have a requirement that  
12 OCFO employees would report any suspected  
13 wrongdoing or impropriety?

14 A. I believe it did. I can't tell you  
15 specifically. It was a published code of conduct.

16 Q. Yes. Did the OIO have any policy or  
17 procedure regarding whistle-blowers?

18 A. I believe that was also in the code of  
19 conduct, but I can't be sure. But whatever is in  
20 there, I would stand by. I believe management was  
21 forbidden from retaliating against

1     whistle-blowers. They were protected as far as  
2     the allegations they were making but, again, you  
3     said, did OIO have a policy, that wouldn't have  
4     been our policy. That would have been the OCFO  
5     Office's policy.

6           Q. Which would effectively become your  
7     policy?

8           A. Right. In fact, if there was a  
9     retaliation, I guess we would have investigated  
10    it. We would have jurisdiction to investigate.

11          Q. Would there come times when OIO would  
12    refer matters to OIG?

13          A. Yes.

14          Q. Was there -- relative to this notion of  
15    investigations, was there such things as internal  
16    versus external investigations conducted by OIO?

17          A. I'm not clear what you mean by external  
18    investigations.

19          Q. Is that term of art written?

20          A. No, it's not a term of art but, as I  
21    mentioned before, jurisdiction was internal OCFO



1 employees and we wouldn't get involved with  
2 external matters unless it involved an OCFO  
3 employee. It would be part of that investigation.

4 Q. Now, we talked about one-on-ones.

5 A. Yes.

6 Q. What is a one-on-one?

7 A. That would be me meeting with Dr. Gandhi  
8 and no one else.

9 Q. And how frequently would you say you would  
10 meet with him?

11 A. I would say, on average, it was about once  
12 every three months, maybe as far as the  
13 one-on-ones, but then there were also breakfast  
14 meetings that we had.

15 Q. The breakfast meetings are separate and  
16 apart from the one-on-ones or were they also  
17 one-on-one?

18 A. Well, good question. I'm not positive.  
19 He may have seen them as being the one-on-ones; I  
20 don't know.

21 Q. Did you also have one-on-ones with Angell

1       Jacobs?

2           A.   Not one-on-ones, but we would meet  
3 frequently to go over what was going on.

4           Q.   What was your working relationship with  
5 Angell, can you describe that?

6           A.   I think it was very good. We got along  
7 very well. She was generally satisfied, I think,  
8 with my performance and we didn't have many  
9 issues. We had a few, but not many.

10          Q.   Would you give her reports regarding your  
11 ongoing issues, investigations and audit reviews?

12          A.   Most definitely, yes.

13          Q.   And what would be the reason for giving  
14 her reports?

15          A.   Well, because of her responsibility within  
16 the agency. We -- technically, I guess, we could  
17 have given them to Dr. Gandhi, but giving them to  
18 Angell, you know, I would let her decide whether  
19 she wanted Dr. Gandhi to see them, whether it was  
20 necessary, but I expected that she was acting for  
21 Dr. Gandhi.

1           Q. And when I say, are you giving her  
2 reports, that would also include updates on  
3 investigations?

4           A. Yes. If she wanted an update, normally,  
5 she would just call me and say what's going on  
6 with such and such investigation.

7           Q. Let me hone in on that for a moment. To  
8 the extent that she's getting an update on the  
9 investigation, in terms of the process with  
10 management as matters are being investigated,  
11 would you say, Angell, here's case X. I've  
12 started an investigation and then, throughout that  
13 process, she's briefed on it as a practice or  
14 would you say, Angell, this investigation is  
15 started and she gets it when it's completed?

16           MR. PARSONS: Object to form.

17           A. I'm not sure I understand your question,  
18 Mr. Temple, I'm sorry.

19           Q. That's fair. You're reporting to Angell  
20 as a practice, number one, correct?

21           A. Right.

1 Q. And you're conducting investigations on an  
2 ongoing basis?

3 A. Well, my office is.

4 Q. Your office is, okay. But when you report  
5 to Angell, do you say, Angell, hypothetically, we  
6 have five or six investigations going on. This is  
7 the status of each investigation?

8 MR. PARSONS: Object to form.

9 A. No.

10 Q. What type of reports would you give her  
11 relative to the updates?

12 A. Well, it's not an update but, once the  
13 investigation is completed and we do our report, I  
14 would normally send that to her. And as I  
15 mentioned earlier, part of the reason was that any  
16 action that needed to be taken on an investigation  
17 would be taken by her, she would decide.

18 Q. So you don't then give her updates during  
19 the investigation?

20 A. Only if she asks for them or sometimes,  
21 during an investigation, we would uncover a

1 management issue that needed to be addressed, such  
2 as a poor control that allowed someone to steal  
3 money or embezzle. And in that case, I would tell  
4 her so she would be aware of it. My  
5 investigations, towards the end, I was morphing  
6 them into a report that would include  
7 investigative findings and, in every  
8 investigation, I would try to identify a control  
9 that led to the misdeed or whatever or the  
10 violation.

11 Q. Paul Lundquist, did you work with him as  
12 well?

13 A. Yes.

14 Q. In what respect?

15 A. Well, he -- I guess, he was the one that  
16 would carry out any administrative action. It was  
17 his office that actually did the procedures, doing  
18 due process and so forth. I'm trying to think  
19 what else. He had me brief his people one time on  
20 ethics, I think. I know I spoke to his group, at  
21 length, about what we do and various ethical

1 issues and so forth.

2 Paul Lundquist was part of the management  
3 team that would meet regularly, once a week, with  
4 Dr. Gandhi. We would have it in the conference  
5 room. Every manager or every -- or the  
6 directorate level would sit down and meet with Dr.  
7 Gandhi and we would go around the table and give  
8 him highlights of what's going on or on issues  
9 that had come up. So I worked with him in that  
10 sense.

11 And finally, we had several outside  
12 reviews during the period I was there by auditing  
13 firms or management firms and, I believe, I worked  
14 with Paul Lundquist on responding to those or  
15 taking corrective action or recommending. I would  
16 interface with him, but that's about it.

17 Q. Relative to Exhibit 1, when this  
18 investigation was complete, did you meet with Paul  
19 Lundquist and Angell to discuss the investigation?

20 MR. PARSONS: And here, I'm going to  
21 repeat my objections of discussion of confidential

1 documents during this deposition as confidential.

2 I believe this is a substantive discussion  
3 regarding the document.

4 MR. TEMPLE: Actually, not necessarily.  
5 The question was: Did he meet and discuss the  
6 documents. There's nothing relative to the  
7 substantive content of the document.

8 A. Yes.

9 Q. You did. Okay. And was it regarding a  
10 recommendation that you derived from the actual  
11 investigation?

12 MR. PARSONS: I'll repeat the same  
13 designation.

14 Q. You can answer the question.

15 A. I don't think so. I can't be clear. In  
16 fact, the recommendation -- let me look at it  
17 again.

18 MR. PARSONS: And I will just note for the  
19 record that the witness is looking at the  
20 confidential documents and using them to form his  
21 answers, so this is one instance of substantive

1 discussion of a confidential document.

2 A. I mention on page four that Scott Bolden  
3 should report the information to the Inspector  
4 General. But essentially, this report of  
5 investigation was -- the idea was to see whether  
6 Eric Payne was involved in any wrongdoing, based  
7 on the allegation by Councilmember Graham, and I  
8 concluded that he wasn't involved in any  
9 wrongdoing.

10 Q. I'm going to move into that in a minute.  
11 I want to ask you a few preliminary questions,  
12 though. Again, back to Paul Lundquist. Did  
13 Lundquist ever make -- have any discussions with  
14 you about potential contractual impropriety by  
15 Michael Teller?

16 A. I believe so.

17 Q. Can you tell me what you recall?

18 A. That's all I recall is that we had a  
19 discussion about it. I believe he was raising  
20 concerns, but I don't recall exactly. I'm sorry.

21 Q. Did anything come out of that



1 communication by way of an investigation?

2 A. Well, there was an investigation initiated  
3 but, whether it was based on something  
4 Mr. Lundquist said or something Eric Payne said, I  
5 just don't recall.

6 Q. Was there any management alerts issued  
7 relative to Michael Teller?

8 A. No, to the best of my recollection.

9 Q. Now, the management alert, again, is a  
10 term of art that I just heard today.

11 A. That's an audit.

12 Q. It's a preaudit piece? It's a radar-type  
13 issue?

14 A. Not so much. It's usually during the  
15 course of an audit. In the course of an audit,  
16 you discover something, like somebody that has a  
17 control issue that would permit theft or  
18 embezzlement.

19 Q. So the management alert is tied into your  
20 comment about controls and alleviating control  
21 weaknesses?

1           A. Right, or other issues that would come up  
2 in the course of an audit.

3           Q. Now, who can make a complaint to OIO?

4           A. Anybody. We even had a hotline.

5           Q. Anybody in the outside, inside?

6           A. Absolutely. For example, if someone knew  
7 one of our employees were stealing money, we would  
8 welcome that.

9           Q. As a policy matter, would the identity of  
10 the complainant be revealed or would it remain  
11 confidential?

12           MR. PARSONS: Object to form.

13           A. I think, I don't remember exactly, but I  
14 think in our hotline we said that they can be  
15 confidential if they wish to, but I believe the  
16 choice was left up to the individual or the  
17 complainant. In the inspector general community,  
18 you automatically give confidentiality because of  
19 the statute, but not us.

20           Q. Let me make sure I understand what you're  
21 saying. So there's no statutory confidentiality

1 required relative to the complaints in the OIO  
2 investigative process?

3 A. As I mentioned before, we're not a  
4 creature of statute.

5 Q. So then, as a policy or a procedure,  
6 there's no confidentiality necessitated?

7 A. No, it can be necessitated. It would  
8 depend on the circumstances.

9 Q. But not as a rule?

10 A. I don't recall, I'm sorry. I'd have to  
11 review, you know, what we said on our hotline and  
12 so forth. I just don't recall.

13 Q. How about internally, in terms of the OCFO  
14 employees who bring complaints within OIO, is  
15 there a layer of confidentiality for those  
16 complaining employees?

17 MR. PARSONS: Object to form.

18 Q. You can answer the question.

19 A. Again, I would have to say that we would  
20 leave that up to the individual whether they  
21 wanted confidentiality or not.

1           Q. So if an individual employee doesn't say  
2 anything about confidentiality and there's no  
3 discussion, then that complainant's identity is  
4 not confidential?

5           MR. PARSONS: Object to form.

6           A. Again, it would depend on the  
7 circumstances. It's a situation where -- let me  
8 put it this way. If a person is a manager talking  
9 about something under their responsibility, I  
10 think confidentiality wouldn't be a given but, if  
11 it's somebody who is a whistle-blower like you  
12 say, I think, at a minimum, we would ask them if  
13 they want to be confidential because they may not  
14 think to ask for confidentiality and, I believe --  
15 and I'm not clear on this, but in a majority of  
16 situations, they didn't ask for confidentiality.

17          Q. How would you determine, though, if a  
18 person was or was not a whistle-blower?

19          A. Well, again it depends on the allegation.  
20 Say a coworker is talking about theft by another  
21 coworker, I'm not sure that would meet the

1 definition of a whistle-blower. But if they're  
2 talking about a policy issue that's wrong or  
3 they're talking about their supervisor, then I  
4 think it would be a whistle-blower situation. But  
5 I'm not sure on that, it depends on your  
6 definition of whistle-blower. I don't know if  
7 there is such a definition except in statute for  
8 people like the Office of Special Counsel.

9 Q. As a practice, when you would have  
10 meetings, for example with Angell or Lundquist,  
11 Paul, would you memorialize those meetings at all?

12 A. No.

13 Q. And directing your attention to 2008 --  
14 you started in January 2008, if I recall?

15 A. Yeah, I think it was the 23rd, because I  
16 believe I was there for at least one week in  
17 January.

18 Q. Did you have any communication in 2008  
19 with Paul Lundquist regarding his concerns about  
20 Mr. Payne?

21 MR. PARSONS: Object to form.

1 Q. You can answer that.

2 A. I don't recall. I know that -- well --

3 Q. 2008.

4 A. About Mr. Payne?

5 Q. Yes.

6 A. I don't recall, I should say. I may have,  
7 but I don't recall any specific conversation.  
8 Perhaps, it's in the e-mail record here. I don't  
9 know.

10 Q. Did you have -- do you have any  
11 recollection of being in any meetings with Angell  
12 or Lundquist where concerns arose about Mr. Payne,  
13 in general, in 2008?

14 A. With Angell, yes, definitely, absolutely.

15 Q. And what were those conversations?

16 A. Well, it had to do with Councilmember  
17 Graham's allegations and that was an important  
18 thing because we had a councilmember making an  
19 allegation against a manager.

20 Q. Other than Councilmember Graham's  
21 allegations, were you in any meetings or

1 discussions with Angell where concerns arose about  
2 Mr. Payne's performance in 2008?

3 A. I'd have to say no. As I mentioned  
4 before -- although I hadn't mentioned this, there  
5 had been a previous investigation of Mr. Payne's  
6 management style, but that was before I came. So  
7 that's the only thing I know about.

8 Q. You didn't have any -- did you have any  
9 communications with Mr. Lundquist in 2008 about  
10 Mr. Payne's performance?

11 A. Again, I don't think so, but I'd have to  
12 say, I don't recall any.

13 Q. How about Mr. Gandhi?

14 A. No.

15 Q. You know Mr. Payne, right?

16 A. Yes. Let me go back to Gandhi. Again,  
17 you're talking about his performance?

18 Q. Yes, sir.

19 A. I'd have to say no, but I don't recall  
20 everything I said to Dr. Gandhi, but I don't know  
21 why Eric's performance would have come up between

1 us.

2 Q. I was asking you, you said you know  
3 Mr. Payne?

4 A. Yes, I do.

5 Q. Did you have occasion to work with him?

6 A. Not work with him, but meet with him,  
7 yeah.

8 Q. About what types of issues?

9 A. Several. When he was working on the  
10 lottery contract, he asked us to use our contract  
11 with an investigative company called USIS, United  
12 States Investigative Service, I believe was the  
13 name of it, and do a due diligence on the bidders  
14 for his lottery contract or the -- it may have  
15 been the winners. I think it was the bidders and  
16 we did that because we have an ongoing  
17 relationship with that company. We used them for  
18 background investigations, but they also did due  
19 diligence. Here, I'm talking so much, I lost  
20 track of your question.

21 Q. I asked did you ever work with him and you



1     said that you met with him and not worked with  
2     him. I look at it as synonymous based on what you  
3     just said.

4           A. Well, yeah; as far as things within his  
5     jurisdiction, no. That's about the only time that  
6     I got involved with him and, once we got the due  
7     diligence reports, I sat down with him and I  
8     believe it was the General Counsel of the lottery  
9     board and we went over them. And then we got  
10    involved in an attempt to get Eric to pay for  
11    them. I don't remember how that was resolved, but  
12    it was always our understanding that he was going  
13    to take it out of his budget because it was, kind  
14    of, expensive.

15           Q. You had subsequent interaction with Eric  
16    relative to two investigations, correct me if I'm  
17    wrong, is that right, the city councilmember's  
18    investigation and David Tseng's investigation?

19           MR. PARSONS: Object to form.

20           Q. Strike the question. Were you involved  
21    with an investigation involving a city

1 councilmember that related to Eric Payne?

2 A. Yes.

3 Q. Were you involved in a subsequent  
4 investigation involving David Tseng and Eric  
5 Payne?

6 A. It's possible you're referring to the  
7 issue of contracting with law firms?

8 Q. Correct.

9 A. I remember we got the complaints and I  
10 think we did some preliminary work in just  
11 interviewing people, like Barbera, but in the end,  
12 and, I believe, this is my recollection, that I  
13 came to the conclusion that this was just a policy  
14 issue between two components of the OCFO and  
15 there's nothing wrong with it, it's just the two  
16 of them couldn't agree on who should handle these  
17 contracts and I thought it was a management issue  
18 that should be resolved by the CFO, by Angell.

19 Q. I'm going to come back to that. Do you  
20 have any reason, in your dealings with Mr. Payne,  
21 to question his integrity?

1           A.   No.

2           Q.   Honesty?

3           A.   Well, I'll tell you, the investigation  
4           that I conducted certainly indicated that he was  
5           telling the truth.

6                   MR. TEMPLE:   I want to take a five-minute  
7           break.

8                   (Brief recess.)

9   BY MR. TEMPLE:

10          Q.   You know Councilmember Jim Graham?

11          A.   Well, yes.   I mean, I don't know him on a  
12          friendship basis, but I met with him a couple of  
13          times.

14          Q.   And did you have communications with  
15          Dr. Gandhi about Mr. Graham?

16          A.   I'm sure that we would have discussed the  
17          investigation based on his allegations, him being  
18          Councilmember Graham, but I don't have a specific  
19          recollection of it.

20          Q.   Let me ask you a different way.   Did  
21          your -- was your investigation of Mr. Graham

1 prompted by a communication that you had with  
2 Mr. Gandhi?

3 A. Well, it wasn't an investigation of  
4 Mr. Graham.

5 Q. Investigation of Mr. Payne?

6 A. Yes, at the insistence of Mr. Graham.

7 Q. Was it prompted by --

8 A. My recollection of how that happened is  
9 that Gandhi told Tseng to handle it and Tseng told  
10 me about the allegation and the investigation  
11 would be the appropriate way to resolve it.

12 Q. You did not have a communication with  
13 Mr. Gandhi in that regard?

14 A. I believe the original allegation came to  
15 me by way of Tseng, not by Dr. Gandhi. I made  
16 mention in here --

17 MR. PARSONS: I'm going to -- once again,  
18 the witness is referring to the confidential  
19 documents, to the extent that he references them,  
20 the portion in which he does, should be designated  
21 as confidential in the protective order.

1           A. Right. I don't see it in here, but I  
2 believe it was David Tseng that told me about it.  
3 He contacted me and said he wanted to get together  
4 because he had this information and he relayed to  
5 me what had happened and, based on that, I did the  
6 investigation.

7           Q. What did David Tseng -- you said he -- was  
8 this in a meeting?

9           A. Yes.

10          Q. And when would that have occurred?

11               MR. PARSONS: Note, for the record, the  
12 witness again is reviewing the confidential  
13 document --

14               MR. TEMPLE: All of this is stipulated to  
15 confidentiality as part of this deposition.

16               MR. PARSONS: We have a continuing  
17 agreement?

18               MR. TEMPLE: Yes.

19               THE WITNESS: I want to say that it was in  
20 early June. I remember we had to meet with  
21 Graham, initially, to flesh out the allegation and

1 I remember we had trouble. I think it was at this  
2 point that we had trouble getting in touch with  
3 him because he was on a trip, so it may have been  
4 delayed somewhat, but that may have been the final  
5 meeting.

6 BY MR. TEMPLE:

7 Q. Do you know if Dr. Gandhi had a meeting  
8 with Mr. Graham about Mr. Payne prior to your  
9 investigation?

10 A. Yes. Well, I wouldn't call it a meeting.  
11 I know that Mr. Graham, the first thing he did was  
12 complain about Eric to Dr. Gandhi. Now, whether  
13 that was in the hallway, outside of a council  
14 hearing or by phone or in a face-to-face meeting,  
15 I don't recall.

16 Q. How do you know that?

17 A. How do I know what?

18 Q. That Mr. Graham talked to Dr. Gandhi?

19 A. Because that was the basis of Dr. Gandhi  
20 asking David Tseng to look into it. That was the  
21 genesis of what I did.

1 MR. PARSONS: Counsel, may I avail myself  
2 of your previous offer and have Exhibit 1?

3 (Mr. Temple complying.)

4 MR. PARSONS: Thank you.

5 BY MR. TEMPLE:

6 Q. I'm going back to Tseng's communication  
7 with you. Let me go back to -- that's in June?

8 A. That's what I think. Yeah, it was  
9 definitely prior to June 26, which is when I  
10 talked to Graham. Because that was the first  
11 thing I did, is I talked to Graham.

12 Q. So as part of this investigation, you did  
13 in fact meet with Councilmember Graham?

14 A. Absolutely. The first thing you do  
15 normally, in an investigation, is you meet with  
16 the complainant and you get as much information as  
17 you can and you take it from there and, since he  
18 was the one making the allegation, I have to use  
19 that as the basis of my investigation. I have to  
20 get as many facts as I could from him. I say  
21 facts, I don't know if you can call it facts based

1 on my investigation.

2 Q. I want to go back to David Tseng and his  
3 communication with you. Now, his  
4 communications -- your relationship with David  
5 Tseng certainly predated the Graham investigation?

6 A. Absolutely.

7 Q. The Graham allegation?

8 A. Yes. We had a content contact.

9 Q. What was the nature of your contacts with  
10 David Tseng?

11 A. A variety of things. Like I said, we  
12 would have the weekly meetings with Dr. Gandhi  
13 that he would attend.

14 Q. They would not always involve legal issues  
15 per se?

16 A. No. No. In fact, they rarely involved  
17 legal issues, but I would always be involved with  
18 David Tseng in connection with the various outside  
19 reviews that were going on at the time. He would  
20 be somebody that would be intimately involved and  
21 how we would respond to the reviews and how we



1 take corrective action and so forth. He would be  
2 part of that process, so I would be sitting there  
3 with him doing that. I also attended -- there was  
4 an Audit Committee, an external audit committee,  
5 and David Tseng would attend those and I would as  
6 well. We would interact in connection with those.

7 Q. Would that have been appropriate for him  
8 to be involved at the review level regarding how  
9 you responded to a review of a situation?

10 MR. PARSONS: Object to form.

11 A. Yes, absolutely.

12 Q. Is that because he was of a legal  
13 relationship with his agency?

14 A. Yes.

15 Q. And that would have been after the review  
16 was completed rather than before?

17 A. No, during. The review, first of all,  
18 would take place and then they would make requests  
19 for documents. They weren't going through me  
20 necessarily. They were going through the front  
21 office.

1 Q. Okay.

2 A. And as an agency, we would have to respond  
3 to these reviews and most of these reviews came  
4 about as a result of the -- what was the name,  
5 Williams, as a result of the tax scandal.

6 Q. Again, back to David Tseng, your meeting  
7 with him about Mr. Graham.

8 A. I believe our initial meeting was about  
9 that, yeah.

10 Q. Tell me, what was discussed during that  
11 meeting?

12 A. He just related to me what Graham had said  
13 to Gandhi and I said, well, let's look into it and  
14 we agreed to meet with Graham. He attended with  
15 me.

16 Q. To that extent, I want to get into that  
17 for a minute. At that point, what are you  
18 thinking when he says Graham has a concern? Did  
19 he say what the concern was?

20 A. Yeah, he did.

21 Q. What did he say?

1           A. Well, I'd have to refer to the Graham  
2 interview but, basically, he was upset that -- he  
3 thought, this is based on my recollection now, he  
4 thought Eric Payne had been involved in setting up  
5 an approach by one of the bidders of the lottery  
6 contract to Mr. Graham, and he blamed Eric for  
7 that, I think. I think that's what it was, but  
8 it's all in my report.

9           Q. Your report is in front of you. Do you  
10 want to look at it?

11          A. Actually, the interview of Graham.  
12 Meeting with Graham, yeah. Okay. The meeting was  
13 predicated on conversations between Councilmember  
14 Jim Graham and Dr. Gandhi. The matter was first  
15 brought to my attention on June 5th, so if I can  
16 go back and correct the record on that. It was  
17 June 5th when I first learned about it. So we  
18 didn't --

19          Q. You're referring, for the record, to the  
20 Bates 2096; is that correct?

21          A. 2096, that's correct. We had the

1 schedule -- even though I found out about it on  
2 June 5th, I couldn't talk to Graham because he was  
3 somewhere, some strange place, and I had to wait  
4 for him to get back.

5 Q. I guess the point I'm making here, I note  
6 that you're meeting with him, with David Tseng?

7 A. Yes.

8 Q. And this is an investigative meeting; is  
9 that correct?

10 A. It's to kick it off.

11 Q. Why would David Tseng be involved in an  
12 OIO investigative meeting?

13 MR. PARSONS: Object to the form.

14 Q. You can answer the question.

15 A. My recollection is that somebody from the  
16 General Counsel's Office always had to be present  
17 when we spoke to somebody from the council and I  
18 had no problem with him being there and it didn't  
19 make a difference either way. He knew about the  
20 matter, and he didn't do any talking at the  
21 meeting. He was just there, sort of, as a

1 liaison.

2 Q. I'm not taking a position on it. I'm just  
3 curious as to why someone outside of OIO, even in  
4 the case of a councilmember, in particular David  
5 Tseng, would need to be present during such a  
6 meeting, is there a reason? I just don't know  
7 what that would be.

8 MR. PARSONS: Object to form.

9 Q. You can answer the question.

10 A. There was no reason to exclude him from  
11 them. He wanted to attend and I think it's  
12 because Dr. Gandhi wanted somebody from the  
13 General Counsel always to be present. I know when  
14 I talked to Eric Payne, he told me there was this  
15 lady from the General Counsel's Office that was --  
16 Cynthia Gross. Cynthia Gross was with Graham when  
17 Graham talked to -- I'm sorry, was with Eric when  
18 Eric talked to Councilmember Graham and I believe  
19 that was the same reason. They want to attend  
20 anything that has to --

21 Q. Doesn't that compromise the integrity and

1 independence --

2 A. Absolutely not. If it would have --

3 Q. Let me finish the question -- of OIO?

4 A. I don't believe it did. Because this was  
5 a preliminary meeting with the complainant and I  
6 didn't see any problem with it.

7 Q. If OIO is an independent -- is attempting  
8 to be as independent as possible, particularly in  
9 the investigation stage, and Tseng reports  
10 directly to Gandhi --

11 A. Correct.

12 Q. -- and Gandhi would know the nature of the  
13 investigation and the subject matter of the  
14 investigation; isn't that correct?

15 A. Of course, because it first came to him.

16 Q. So Gandhi would know then, based upon Jim  
17 Graham's communications, at this point, what the  
18 exact details of that complaint were?

19 MR. PARSONS: Object to form.

20 A. He wouldn't know the exact details.

21 That's why we had to meet with Graham.

1 Q. I'm talking about after the meeting.

2 MR. PARSONS: Object to form.

3 A. No. I didn't report to Gandhi after the  
4 meeting with Graham.

5 Q. But Tseng was present?

6 A. Right.

7 Q. Do you know what Tseng told Gandhi after  
8 this meeting?

9 A. No, I don't.

10 Q. So you don't know if Gandhi was advised of  
11 the details of this meeting by Tseng?

12 A. I do not know, but I don't see any problem  
13 with him being told.

14 Q. What did Mr. Graham complain to you about  
15 when you and Mr. Tseng met with him?

16 A. I'd have to refer to the report. I can  
17 look at it, if you like. 2096?

18 Q. Uh-huh.

19 A. Okay. Well, it's all laid out in this  
20 memorandum, which I stand by.

21 Q. Let me direct your attention to the

1 background section there on page 2096.

2 A. Yes.

3 Q. Do you know -- it states that Mr. Graham  
4 stated that he did not wish to be identified as a  
5 source of this investigation; is that correct?

6 A. Yes.

7 Q. And why is that?

8 A. Good question. I don't know. I can  
9 speculate, but I don't know.

10 Q. What are your thoughts?

11 MR. PARSONS: Object to form.

12 MR. TEMPLE: Noted.

13 BY MR. TEMPLE:

14 Q. You can answer.

15 A. My thoughts are that the whole thing was  
16 connected to this logrolling by Graham with the  
17 lottery bidder and he was afraid that might come  
18 out or that would be a natural thing that it might  
19 come out and I also think he was not being  
20 completely candid during this interview and that's  
21 why he wanted to be confidential.



1           Q. Let me speak to two issues. You used the  
2 term logrolling. Can you just explain for the  
3 record what you mean by that term?

4           A. I mean the sordid quid pro quo for  
5 Graham's dropping his objections to the lottery  
6 contract, and he asked -- it had to do with a  
7 metro property that was being developed and  
8 Councilmember Graham wanted his own person to  
9 develop that or have that contract. And that came  
10 into play with respect to whether Graham would  
11 hold up the lottery contract or not.

12          Q. And I'm directing your attention now to  
13 the issue of the allegation regarding the OCFO  
14 employee, also on 2096.

15          A. Yeah.

16          Q. Can you tell me what Graham stated to you,  
17 essentially, summarized?

18          A. I would have to read this, but it is all  
19 set out in the memo. He was concerned about Club  
20 U and Warren C. Williams, Sr. and junior, as well.  
21 Graham reported that a meeting -- a conversation

1     that he had with Eric Payne and, again, I'm just  
2     trying to summarize, but it appears that what he  
3     was saying -- what Graham was saying is, he was  
4     blaming Eric Payne for the fact that a lady by the  
5     name of Dotty Wade had dropped by Graham's office  
6     and she tried to set up a meeting with Graham with  
7     Intralot, the company Intralot.

8           Q.   And you're familiar with Intralot?

9           A.   Well, not familiar with them.   I know that  
10    they are one of the bidders, yeah.

11          Q.   Is that it?

12          A.   That's it, yes.

13          Q.   And that meeting was for what purpose?

14               MR. PARSONS:   Object to form.

15          A.   Which meeting?

16          Q.   The meeting that Graham said that Dotty  
17    Wade was trying to have with Intralot.

18          A.   I believe the meeting was -- I wasn't at  
19    that meeting of course, but I believe the -- well,  
20    according to everything I saw, it was a meeting  
21    between Intralot and Graham where they were trying

1 to convince Graham to drop his opposition to the  
2 lottery contract.

3 Q. Now, directing your attention to the first  
4 paragraph under the heading of Other Matters?

5 A. Yeah.

6 Q. Can you read that paragraph?

7 A. "Mr. Graham began the meeting and spent a  
8 considerable time talking about his  
9 dissatisfaction with the principals of the  
10 putative winning bidder for the lottery contract.  
11 He told us about the problems with Club U being a  
12 notorious place and a magnet for violence. When  
13 Terrence Brown was murdered there, Chief Ramsey  
14 found that Club U had a pattern of violence and  
15 shut it down for a period of days. Club U is  
16 owned by Warren C. Williams, Sr. and the general  
17 manager Warren C. Williams, Jr."

18 Q. Did you deduce, from that discussion, that  
19 Mr. Graham was opposed to Warren Williams as a  
20 subcontractor in the lottery contract award?

21 MR. PARSONS: Object to form.

1           A. Again, that's my recollection, but I stand  
2 by my report of the interview of Graham. He  
3 didn't like the Williams' because of their lack of  
4 lottery experience.

5           Q. What did the Williams' lottery experience  
6 or selection as a contract-deemed subcontractor  
7 here have to do with this complaint against  
8 Mr. Payne?

9           A. Again, I believe it had to do with the  
10 meeting that was set up with Mr. Graham to  
11 convince him to drop his opposition. But again, I  
12 stand by what I wrote at the time, and I wrote  
13 this right after the meeting. It was the day  
14 after that I finished this memo. I'm sorry, it  
15 says Monday June 23, but I'm almost positive I  
16 completed it the next day, but I probably made  
17 edits to it and so forth.

18          Q. At that particular point, when you met  
19 with Mr. Graham and he spoke about the Williams',  
20 did he actually give you documentation on the  
21 Williams' or did he show it to you?

1           A.   No.

2                   MR. PARSONS:   Object to form.

3           A.   I think he showed me some newspaper  
4 articles or something of that nature, but he  
5 didn't give them to me.

6           Q.   2098, third paragraph from the bottom, you  
7 state there that Councilmember Graham had  
8 background research on the Williams' that appeared  
9 to have been done by a commercial background  
10 investigation company?

11          A.   Yes.   Yes.

12          Q.   Did he show you something that led you to  
13 believe that?

14          A.   I think he showed me the record that  
15 contained the 2001 DWI, and I see here he gave us  
16 the first copy of the first page of a letter  
17 concerning a threat by Warren Williams, Jr.

18          Q.   Now, can you tell me about that letter?

19          A.   Well, just what it says here.   It was from  
20 an individual, but the person who was threatened,  
21 it was that person sending a letter to the mayor

1 and to the chief of police alleging that Williams  
2 had threatened him because Barnes supported the  
3 other bidder on the lottery contract.

4 Q. Directing your attention, just for a  
5 moment, to 2104.

6 A. Okay. That's the letter. It's actually  
7 just the first page.

8 Q. Did you ever see the full page? First of  
9 all, for the record, this is a letter to the mayor  
10 and the chief of police?

11 A. Yes.

12 Q. And who's this letter actually from?

13 A. It's got a letterhead of Marc Barnes. I  
14 don't have a signature page.

15 Q. It mentions a gentleman by the name of  
16 Cornell West. Is that Cornell West or Cornell  
17 Jones, do you know?

18 A. Where is that?

19 Q. In the body of the letter.

20 MR. PARSONS: Object to form.

21 A. I don't know.

1 Q. Did you consider this to be a threat by  
2 Warren Williams?

3 A. I considered this to be a complaint by  
4 Marc Barnes about what he perceived to be a  
5 threat.

6 Q. I'm trying to be clear. Based upon the  
7 language here, I'm looking at the first paragraph  
8 beginning with, once the session had adjourned.

9 A. Hold on.

10 Q. Take a minute to read it. Just look up  
11 when you're finished.

12 MR. PARSONS: Which line are you at,  
13 Counsel?

14 MR. TEMPLE: Once the session had  
15 adjourned. About seven or eight lines from the  
16 bottom.

17 A. I see, once the session had adjourned. I  
18 see where you are. Cornell -- yes. What about  
19 it?

20 Q. Was that actually a threat by Warren  
21 Williams against Mr. Barnes?

1 MR. PARSONS: Object to form.

2 Q. As you've read it?

3 A. It was a threat by Cornell West, as I read  
4 it.

5 Q. Do you know why Graham referenced this  
6 particular letter to you?

7 MR. PARSONS: Object to form.

8 Q. You can answer the question.

9 A. I believe it was to indicate the character  
10 of Warren Williams. It was to reflect adversely  
11 on the Williams' character.

12 Q. Now, relative to this particular complaint  
13 by Mr. Graham, what did you do after you got this  
14 information from him?

15 A. I started to talk about the players. I  
16 started to interview the players, including Eric  
17 Payne and some of the people that were present at  
18 this so-called meeting. They all had to be -- I  
19 had to talk to all of them. Find out what Eric  
20 Payne's involvement was in that meeting.

21 Q. Tseng, was he involved throughout the



1 balance of this investigative process?

2 A. No.

3 Q. And you spoke with Eric Payne?

4 A. Yeah.

5 Q. Cynthia --

6 A. Gross.

7 MR. PARSONS: Object to form.

8 Q. And who else?

9 A. Well, I talked to some of the outside  
10 parties that attended the meeting.

11 Q. You met with Dorothy Wade?

12 A. Yes, I believe I did. If you hold on for  
13 a second, I'm looking at the investigative report.  
14 I met with a lady called Alaka Williams. Yeah, I  
15 did interview Dotty Love Wade; I interviewed her.

16 Q. When you interviewed -- let me ask you  
17 another question. You received a number of  
18 e-mails here which regard exchanges between  
19 Mr. Graham and, it looks like, I'm referring to  
20 2112, in sequence, Mr. Link?

21 A. I got 2112. What is it there?

1           Q.   There's an exchange of e-mails between  
2           Mr. Graham and Mr. Link and then another several  
3           e-mails to and from Williams and Mr. Bolden.  
4           Where did you get these e-mails?

5           A.   Probably from Alaka Williams or from Scott  
6           Bolden. Bolden may have -- he was representing  
7           her and he was attending the interview and,  
8           whether he gave them to me or she gave them to me,  
9           I think what probably happened, and I don't have a  
10          clear recollection of this, is he mentioned these  
11          e-mails and then later gave them to me at my  
12          request.

13          Q.   What did those e-mails reveal to you?

14          A.   I'm sorry, I'd have to read each one and  
15          try to figure it out. I have no recollection of  
16          this matter.

17          Q.   You mentioned logrolling?

18          A.   To go back to what you were saying, I  
19          think the purpose of giving the e-mails to me is  
20          that they supported what Alaka Williams was saying  
21          about the meeting with Graham. These are the

1 things that bolstered her testimony and they were  
2 contemporaneous with the events that you were  
3 talking about.

4 Q. What was her -- you say testimony, you  
5 mean her interview sessions?

6 A. Yes.

7 Q. What did she state in her interview with  
8 you, summary?

9 A. I'd have to go back to her interview  
10 report. Is it in here?

11 Q. Yes, it's in there.

12 A. I couldn't just rattle it off, off the top  
13 of my head. But wait, if you look at the report  
14 of the investigation, I say, she was interviewed  
15 and told me that she did not know how her first  
16 meeting with Dotty Wade was arranged, et cetera.

17 Q. You're reading from?

18 A. 2043.

19 Q. And your reading from paragraph?

20 A. The third from the bottom.

21 Q. Do you want to read that into the record?

1           A.   That paragraph?

2           Q.   Please.

3           A.   "Alaka Williams was interviewed and told  
4   me she did not know how her first meeting with  
5   Dotty Wade was arranged, but the first contact  
6   that Williams had about Wade was from Cornell  
7   Jones, who called Warren Williams, Jr., and  
8   suggested that he meet with Wade. Alaka Williams  
9   said that Wade told her that it was Payne who  
10   first told Wade about the new lottery contract,  
11   but Williams did not think that Payne had put Wade  
12   onto W-2I."

13          Q.   Now, there's a name referenced here.

14          A.   Yes.

15          Q.   Cornell Jones.

16          A.   Yes.

17          Q.   Do you know who Cornell Jones is?

18          A.   He was an associate or a friend of these  
19   people, Alaka Williams and Warren Williams.

20          Q.   Did you speak to him, at all?

21          A.   I don't think I did.

1           Q. Do you think this is the same name that  
2 was referenced when it says, Cornell, in the  
3 letter from Marc Barnes to the chief of police?

4           MR. PARSONS: Object to form.

5           A. You're going to have to hold on while I go  
6 back to it. Cornell Jones -- what's the number?

7           Q. 2104.

8           A. Well, in the letter of 2104, he talks  
9 about a Cornell West and, in my report, I talk  
10 about a Cornell Jones.

11          Q. You've never resolved that discrepancy, in  
12 the names?

13          A. No, I didn't have to.

14          Q. After you interviewed Dotty Wade, Cynthia  
15 Gross and Eric Payne, did you make some assessment  
16 about the credibility of Mr. Graham's allegations?

17          A. Well, I had my opinion, yeah.

18          Q. Your opinion was based on the evidence?

19          A. Yes.

20          Q. And what was your opinion?

21          MR. PARSONS: Object to form.

1           A. That Graham was recklessly jumping to  
2 conclusions and attempting to press his own  
3 political agenda with the lottery.

4           Q. The term reckless is a strong term.

5           A. Well, I thought to make an allegation  
6 against a D.C. employee who was doing his job and  
7 to jump to a conclusion that that individual had  
8 done something wrong, based on what clearly was  
9 some misunderstandings by Graham, I thought that  
10 was reckless.

11           MR. PARSONS: Same objection.

12           Q. And you mentioned his own political  
13 agenda.

14           A. Yes.

15           Q. What do you mean by that?

16           MR. PARSONS: Object to form.

17           Q. You can answer the question.

18           A. It appears to me that he was using his  
19 opposition to the lottery to get something and  
20 that's what he attempted to do. He was going to  
21 drop his opposition if he got what he wanted and

1       that's what I call political agenda.

2           Q.   He was going to drop his opposition to the  
3       lottery contract?

4           A.   Right, which had to be approved by the  
5       council.

6           Q.   If he got what he wanted, and what did he  
7       want?

8           MR. PARSONS:   Object to the form.

9           Q.   You can answer.

10          A.   Again, it had to do with the metro  
11       property and the development of a metro property.  
12       And I think he also just didn't like some of the  
13       people who were involved.   Because I believe one  
14       of them had actively campaigned or assisted one of  
15       Graham's opponents in some council race and Graham  
16       took that very personal.

17          Q.   What would the consequences had been of a  
18       finding, a sustained finding, against Mr. Payne by  
19       OIO?

20          MR. PARSONS:   Object to form.

21          A.   Again, it wouldn't have been up to me.   I

1 would have reported the results to Angell and it  
2 would have been up to her what to do. If I felt  
3 very strongly about it, I could have recommended  
4 certain administrative actions.

5 Q. Such as?

6 A. Well, there's all kinds of administrative  
7 actions you can take, but I didn't. But the  
8 administrative action could include a reprimand, a  
9 letter in his file, suspension and termination.

10 Q. In this particular case, if what Graham  
11 suspected or alleged of Payne were true, is that  
12 the type of matter that would rise to something  
13 that would be a terminable offense?

14 MR. PARSONS: Object to form.

15 Q. You can answer the question.

16 A. Again, it depended on what Angell thought,  
17 not what I thought. I wouldn't know. I think the  
18 management would take into account more than just  
19 the investigation. They would take into account  
20 his work record, other accomplishments by him and  
21 they would weigh those things in determining the



1 appropriate administrative sanction.

2 Q. Isn't Mr. Graham alleging a type of  
3 interference with the contractual process on  
4 Mr. Payne, who is the contracting officer?

5 MR. PARSONS: Object to form.

6 Q. You can answer.

7 A. Again, I would have to refresh my  
8 recollection, but I believe there was already a  
9 contract. The only thing that was going on was  
10 getting the council to approve it, because they  
11 have to approve anything over a million dollars,  
12 whether you would say it was in a contracting  
13 process, I guess you would have to, because it's  
14 not final until council approves it. That's part  
15 of the process, but the contract, as far as the  
16 OCFO was concerned, had already been awarded and  
17 that's my recollection.

18 Q. We're on the same page in terms of our  
19 understanding but, to the extent that the contract  
20 -- an awarded contract has to be affirmed by the  
21 council and was not then affirmed by the council,

1 to allege that the contracting officer is now in  
2 the process of interfering with that contract is a  
3 pretty serious charge, you would think?

4 MR. PARSONS: Object to form.

5 A. Again, I don't know the extent to which  
6 the OCFO can push a contract that they already  
7 awarded, whether they can lobby for it or not.  
8 I'm just not sure. But as I said, I exonerated  
9 Eric Payne. I didn't find that he had done that.  
10 But if he had, then I think I would have to  
11 consider a lot of things.

12 Q. Relative to -- you said that you did not  
13 find Mr. Graham credible. Just looking at the  
14 summary of your report, can you highlight why you  
15 didn't think he was credible?

16 MR. PARSONS: Object to form.

17 A. In interviewing him, I found some  
18 discrepancies on dates and he wasn't candid with  
19 me as to what took place at the meetings, if you  
20 were to believe the other participants. He was  
21 not telling me the whole story and, as I said

1 before, the fact that he would jump to conclusions  
2 about Eric Payne gave me a negative feeling about  
3 his credibility.

4 Q. Did you report -- have any communication  
5 with Mr. Gandhi, at all, about this report of  
6 investigation?

7 A. I don't recall specifically, but I  
8 probably told him what we had found.

9 Q. So there would have been a one-on-one, for  
10 example?

11 A. Probably but, again, I don't have a  
12 specific recollection of it.

13 Q. Now, in this particular investigation, OIO  
14 has ascertained what you called logrolling, some  
15 people call horse trading, but has ascertained  
16 Councilmember Graham's interest in negotiating his  
17 support of one contract in exchange for another;  
18 is that accurate?

19 MR. PARSONS: Object to form.

20 MR. TEMPLE: Noted.

21 A. I was distracted. The last part of your

1 question?

2 Q. Let me make it clear. You ascertained  
3 that Mr. Graham had attempted to negotiate his  
4 support of one contract in exchange for a contract  
5 doing something specific with another contractor?

6 MR. PARSONS: Object to form.

7 Q. You can answer.

8 A. Yes.

9 Q. Does that -- what Mr. Graham did, was that  
10 ethical?

11 MR. PARSONS: Object to form.

12 A. Again, I don't think that's my call. I  
13 think he was a member of the metro board at the  
14 time and, I think, that for him to be involved in  
15 trying to change or modify or effect a contract  
16 between metro and a contractor, I would think that  
17 would be irregular, at the least, for a board  
18 member to engage in something like that.

19 Q. How about beyond irregular to a point, do  
20 you think it rose to a level of a conflict of  
21 interest?

1 A. I personally think that, yes.

2 MR. PARSONS: Object to the form.

3 Q. You can answer the question.

4 MR. PARSONS: Object to form.

5 Q. And your answer was?

6 A. I personally would think that, yes.

7 Q. Did anyone have any communication with  
8 Mr. Graham and say, hey, man, this is a problem  
9 here, this communication with Mr. Williams is a  
10 particular problem?

11 MR. PARSONS: Object to form.

12 MR. TEMPLE: Noted.

13 Q. You can answer.

14 A. No, not to my knowledge.

15 Q. Now --

16 A. Let me amend that to say, I didn't.  
17 Whether someone else did, I have no idea.

18 Q. In this particular situation, why wouldn't  
19 a matter of this nature be sent to IG?

20 MR. PARSONS: Object to form.

21 A. It was sent to IG.

1 Q. No, the Graham/Williams dealings?

2 A. Yes.

3 Q. It was sent to IG?

4 A. Well, I discussed it with the head of  
5 investigations at IG and, afterwards, one of her  
6 agents came over to look at the file and I gave  
7 that agent everything that was written up in the  
8 file and I believe she made copies of what she  
9 needed. So in my mind, that's referring it to the  
10 IG, even though it was informal in nature.

11 Q. Let me go back to Mike Teller. And you  
12 know Michael Teller?

13 A. Yes.

14 Q. Are you aware of a complaint by Mr. Payne  
15 to OIO about Michael Teller?

16 A. Yes.

17 Q. Prior to his complaint, did you know  
18 anything about Mike Teller's prior employment  
19 history before he came to OCFO?

20 A. I don't think I did. I probably knew  
21 where he came from, but I can't recall now what

1       that was.

2           Q.   You have no personal knowledge about any  
3       prior questions about his contract practices?

4           A.   I may have become aware of them later on,  
5       yeah, but I don't remember that I did, but it  
6       sounds familiar. But initially, I didn't know  
7       anything about it.

8           Q.   So Mr. Payne filed a complaint in OIO  
9       about Michael Teller?

10          A.   Yeah, if you -- I don't think filed is the  
11       correct --

12          Q.   Complained.

13          A.   Yeah, he complained.

14          Q.   Well, filed --

15          A.   I'm sorry, I'm just being too technical.

16          Q.   I just want to make sure, when we say  
17       filed, it means verbal --

18          A.   I think it was oral.

19          Q.   Who did he complain to?

20          A.   To me, I think.

21          Q.   Would that have been about May 15th?

1 A. I don't remember.

2 Q. You did meet with him on the morning of  
3 May 15th; is that right?

4 A. That could have been something we  
5 discussed, unless it had something to do with  
6 USIS, but that sounds about right.

7 MR. TEMPLE: We're going to take a break.

8 (Brief recess.)

9 BY MR. TEMPLE:

10 Q. Let me go back over a few things just for  
11 clarification. You did have a meeting with Mr.  
12 Gandhi on May 15, 2008?

13 A. Is that according to his calendar?

14 Q. Yes.

15 A. May 15th?

16 Q. If you go to the May 15th calendar --

17 A. Yeah, I see it.

18 MR. PARSONS: Object to form.

19 Q. Let me bring your attention to --

20 A. Oh, a breakfast meeting.

21 Q. Yes. And this is Exhibit --



1           A.   What's that, \$25?

2           Q.   It's probably a tip.   This is Exhibit 2  
3           and I just want you to reference that it's  
4           EWP-10985.   So I just wanted to confirm that there  
5           was a meeting between you and Gandhi on May 15th,  
6           a breakfast meeting?

7           A.   Well, a lot of times, even though it's in  
8           his calendar, at the last minute, he'll postpone  
9           it, like if he has to meet with a councilmemmber  
10          or something like that, but this surely indicates  
11          that I had a breakfast meeting with him.   That was  
12          at the Old Ebbitt, that's where we had them.

13          Q.   Let me refer your attention to the  
14          previous page, the May 8th.

15          A.   Yeah, I see it.

16          Q.   It's hard to see, but it looks like  
17          another meeting --

18               MR. PARSONS:   Just let me interject real  
19          quick.   These documents are also subject to a  
20          protective order, so if we all can agree that this  
21          line of questioning will also be confidential?

1 MR. TEMPLE: By law, it's confidential.

2 MR. PARSONS: I'm just clarifying for the  
3 record.

4 MR. TEMPLE: Yes.

5 A. The one on the 8th is with Tom Nida and me  
6 and Gandhi.

7 Q. So --

8 A. Do you know who he is?

9 Q. No.

10 A. I think he's the chairman of the Chartered  
11 School Board and we were talking about chartered  
12 schools.

13 Q. So in this meeting of the 15th of May,  
14 what were you and Gandhi discussing?

15 A. I just can't tell you. I don't know. We  
16 would be discussing matters of current issues, I  
17 guess.

18 Q. Do you know if the issue of any OIO  
19 investigations was discussed at that meeting?

20 A. Mostly, we would talk about audit issues,  
21 because we're in a public area and I think, you

1 know, if we talked about investigations, it would  
2 be obliquely, but I just don't recall. I couldn't  
3 tell you exactly what we discussed.

4 Q. But it would have been just you and  
5 Mr. Gandhi at that meeting?

6 A. Yes. Yeah, the one with Nida, it was  
7 specifically set up so he could talk to us and I  
8 think it was at his request and it had nothing to  
9 do with the lottery. So this \$25, that seems to  
10 indicate we did have a meeting. He probably  
11 charged it to an expense account or something.

12 Q. Let me go back to Mr. Graham's  
13 investigation. Did you have any communication  
14 with David Tseng about Mr. Graham's concerns about  
15 Mr. Payne prior to June 5th, 2008?

16 A. No, I don't think I did.

17 Q. How about with Angell Jacobs?

18 A. Well, let me back up a little. It's  
19 possible that Tseng called me and said he had  
20 something from Graham that we needed to discuss  
21 prior to that meeting and then we met. I don't

1 recall that, but if it was the fifth that I met  
2 with him, that was my first knowledge of the  
3 allegation, the details.

4 Q. So I take it from your answer that would  
5 mean that you had no communication as well with  
6 Mr. Lundquist or Ms. Jacobs on that particular  
7 question, on that subject matter?

8 A. At what time frame?

9 Q. Prior to June 5th?

10 A. No.

11 Q. Were you aware of any e-mail communication  
12 between Mr. Graham and Dr. Gandhi related to  
13 Mr. Graham's concerns, lottery concerns, about  
14 Mr. Payne?

15 MR. PARSONS: Object to form.

16 A. I'm not aware of any, no. I think they  
17 had an oral exchange.

18 Q. They?

19 A. Gandhi and Graham about this and, again, I  
20 think they either stopped in the hall or they did  
21 it by phone. Wait, hold on one second. No. No.

1 I stand by what I said.

2 Q. You said you think -- you don't know,  
3 though, independent of the communication, initial  
4 communication, whether it was followed up by  
5 e-mails, one way or the other, Graham to Gandhi,  
6 Gandhi to Graham?

7 MR. PARSONS: Objection to form.

8 A. I don't know.

9 Q. And you've never been copied on any  
10 e-mails between Gandhi and Graham?

11 A. I may have if it related to something I  
12 was doing, but I don't remember anything in  
13 connection with this investigation. And like I --  
14 I don't know if I mentioned this, but I don't  
15 think Gandhi would have communicated with him by  
16 e-mail, since they're in the same building. They  
17 probably would just -- one would go to the other's  
18 office, probably.

19 Q. But that's speculation, isn't it?

20 A. Yes, it is speculation.

21 Q. I want to go back to something regarding

1 Mr. Teller.

2 A. Yes.

3 Q. Does Mr. Payne report to your office  
4 concerns about Mr. Teller in April 2008?

5 A. I don't remember the exact date, but he  
6 did report an allegation -- made allegations.

7 Q. Tell me how that was received and  
8 processed?

9 MR. PARSONS: Object to form.

10 A. I believe it was him, Eric, coming over to  
11 my office and talking with me, but I can't  
12 remember exactly.

13 Q. And once he would have relayed that  
14 information to you, what would you have done?

15 MR. PARSONS: Object to form.

16 A. I would have discussed it with my director  
17 of investigations and decided whether or not to  
18 initiate an investigation.

19 Q. And in that particular situation, that  
20 would have been assigned to? Who was that person  
21 at that time?

1 MR. PARSONS: Object to form.

2 A. To what?

3 Q. The person that you discussed it with.

4 A. Again, I'm just telling you my regular  
5 practice. I don't remember exactly what happened  
6 in this case, but I would have talked to Butch  
7 Fultz about it and we would have tossed, back and  
8 forth, ideas and I would make a decision whether  
9 to open an investigation.

10 Q. Ultimately, it was assigned to  
11 Mr. Pendleton?

12 A. That's my recollection.

13 Q. Do you know if Pendleton conducted an  
14 investigation of Mr. Payne's complaints?

15 A. Well, as I mentioned to you, I think I  
16 mentioned previously, one of the first things you  
17 do in an investigation is to debrief the  
18 complainant and it's my belief that Pendleton  
19 tried to contact Eric Payne and I know he had a  
20 little bit of trouble connecting with Eric Payne  
21 and, whether he did eventually meet or not, I

1 don't remember. But you know, you probably have  
2 better information than me on that.

3 MR. PARSONS: I apologize. May I take a  
4 break and make a quick phone call?

5 MR. TEMPLE: Sure.

6 (Brief recess.)

7 BY MR. TEMPLE:

8 Q. Directing your attention to Exhibit 1 and  
9 I note in this document, that we have been  
10 provided, that there is a report of investigation  
11 which is Bated 2041 through 2044 and this document  
12 says: To the file, and it is signed. Is that  
13 your signature, Mr. Andary?

14 A. On 2041, yes, it is.

15 Q. It's dated July 29th, 2008?

16 A. Right.

17 Q. To be clear, let me make sure I understand  
18 this. When you say: To the file, what does that  
19 mean?

20 A. Well, that was just my way of handling  
21 memos like this. I would do the memo and then, if



1 I transmitted it to anybody, then I would do the  
2 transmittal memo.

3 Q. So in this particular case -- but that's  
4 closing the actual investigation?

5 A. Yes.

6 Q. Now, there was a transmittal of this  
7 particular document -- of this investigation. I'm  
8 directing your attention to 2045.

9 A. Right.

10 Q. I want you to look at that document and I  
11 note that there is a signature on that document,  
12 as well?

13 A. Yes.

14 Q. Is that your signature?

15 A. Yes.

16 Q. Did you transmit a copy or the report of  
17 investigation, Case No. IS-2008-0154, to Angell  
18 Jacobs on that date?

19 A. I believe I did. It may have been that  
20 that's the date I prepared the memo and I may have  
21 wanted to hand carry it and I just brought it with

1 me the next time I went down, but I don't  
2 remember.

3 Q. Let me clarify something here. This  
4 document is marked draft.

5 A. Yes, 2045.

6 Q. 2045, dated August 4th, 2008, was it your  
7 practice to sign draft documents?

8 A. I didn't have any specific -- my policy or  
9 my --

10 Q. Your practice.

11 A. I didn't have a practice in that regard.  
12 I just did what I felt like doing.

13 Q. In this particular situation, the draft  
14 that's there, did you put that draft on that  
15 document?

16 A. I see it and I just don't recall.

17 Q. If you didn't put the draft on that  
18 document that was transmitted, there would be a  
19 document that was transmitted that didn't have a  
20 draft stamp on it; is that correct?

21 MR. PARSONS: Object to form.

1           A. Not necessarily, no.

2           Q. Is there a reason -- well, going back to  
3 the July 28th, 2008 report, that was a final  
4 report; is that correct?

5           A. I considered it as such.

6           MR. PARSONS: Where are we?

7           MR. TEMPLE: 2008 report.

8           MR. PARSONS: 2041?

9           MR. TEMPLE: I'm not going to a particular  
10 document.

11 BY MR. TEMPLE:

12           Q. I'm saying the July 29th, 2008 report was  
13 a final report as of July 29th, 2008?

14           A. I considered it as such, yes.

15           Q. To that extent, is there a reason why you  
16 would transmit a document, including that report,  
17 and stamp it as a draft?

18           A. I don't know. I can't confirm that I  
19 stamped it, or whether it was stamped later, but I  
20 can speculate why that might have happened.

21           MR. PARSONS: I would object.

1           Q. You have, first of all, no recollection of  
2 stamping this draft on that?

3           A. No. But that doesn't mean I didn't. I  
4 want to be clear on that.

5           Q. And let me make sure. Again, you would  
6 sign a document and also stamp draft on the  
7 document?

8           A. Well, it's still my document, yeah.

9           Q. But it's a final document and not a draft?

10          A. I don't understand your question.

11          Q. Well, if you send this memo to Angell  
12 Jacobs --

13          A. Yes.

14          Q. -- this is not a draft memo. This is a  
15 final memo?

16          A. Right.

17          Q. So to be clear, so the answer is yes?

18          A. Yes.

19          Q. Now, your answer as to why the term  
20 draft -- why you would put draft on this memo?

21          A. If I did it, there's two reasons I can

1 think of, but I honestly can't recall. The first  
2 reason would be that it was such a sensitive memo  
3 involving a congressman -- I'm sorry, a  
4 councilmember who wished to be confidential that I  
5 wanted to float it by first to see if there was  
6 any problem in the front office with me having  
7 such a memo accusing or stating a lot of things  
8 that was extraneous to the actual investigation  
9 and that may have been why I would make it a draft  
10 first, just to see what the reaction was. And the  
11 other reason -- but I'm not saying that's why it  
12 was. I don't recall. But the other reason would  
13 be under the theory that it would protect it from  
14 freedom of information requests, because of the  
15 draft.

16 Q. Let me rewind on that. It, we've been  
17 talking about 2045, when you say it, you're  
18 referring to the actual investigative report  
19 that's accompanying this particular memo; is that  
20 correct?

21 A. Well, both.

1 Q. So both documents. Let me go back to the  
2 point here. The document that's dated July 29th,  
3 2008, Bated 2041 --

4 A. Yeah.

5 Q. -- that is not stated draft?

6 A. Right.

7 Q. So if you wanted to do either of the two  
8 things that you opined on momentarily, it would  
9 have been a draft of this document, as well; is  
10 that correct?

11 A. No. No. But again, I'm speculating, but  
12 it looks like I decided to take out the  
13 information in the one paragraph, the first full  
14 paragraph on page four of the one marked draft,  
15 which is 2049, that there was no reason to have  
16 that in a document that might become public.

17 MR. PARSONS: I would object to  
18 speculation.

19 A. It is speculation.

20 Q. Let me try to hone in on this for a  
21 moment. On August the 4th, it appears that you

1 transmitted a document to Angell Jacobs and David  
2 Tseng; is that correct?

3 A. That's the date of the memo, yes.

4 Q. Is that the accurate date for purposes of  
5 this transmittal?

6 A. The one marked draft?

7 Q. Yes, 2045.

8 A. It's accurate as to the day I completed  
9 this memo but, as I mentioned to you before, I may  
10 have held it until my next opportunity to go down  
11 to the Wilson Building. I was located at 1275 K  
12 Street and rather than to send it through the mail  
13 or through the intraoffice mail, I may have held  
14 it for a couple of days before I brought it down.  
15 I just don't remember.

16 Q. To the extent that you're sending it to  
17 Angell and David and to the extent this is an  
18 investigation, you would agree that the  
19 investigative component is at least, in principle,  
20 independent?

21 A. Well, that was my view of it.

1           Q. Now, do you recall any communication with  
2 David or Angell about this particular transmittal  
3 after August the 4th, 2008?

4           A. I don't recall any specific conversation  
5 except I did have conversations with them about  
6 the investigation because we had not yet, at that  
7 moment, communicated the results to Graham. So we  
8 talked about setting up the interview or the  
9 meeting with Jim Graham.

10          Q. No, I'm not talking about that.

11           MR. PARSONS: Let him finish, please.

12          Q. I'm speaking to the period of time,  
13 August 4th, 2008, after that period of time.

14           MR. PARSONS: You can finish your answer.

15          A. As it says right here, I say, please let  
16 me know when and under what circumstances such a  
17 briefing should be conducted. So I haven't talked  
18 to Graham yet and that's still pending. And the  
19 practice was that the General Counsel would set up  
20 the meeting with Graham, so I'm just saying -- I'm  
21 reminding him, he has to be briefed. If you want



1 to set it up, great, let me know.

2 Q. Was a briefing scheduled?

3 A. Yes.

4 Q. And was it conducted?

5 A. Yes.

6 Q. Who was present?

7 A. Myself and David Tseng.

8 Q. And where did that take place?

9 A. In Graham's office.

10 Q. And what was disclosed to Graham at that  
11 time?

12 A. I told him basically that we had not  
13 substantiated the allegation and I pointed out a  
14 few problems where Graham had had one recollection  
15 and the facts showed something else and that he  
16 was also confused about some of the dates that he  
17 had given me. That was about it. He wasn't that  
18 happy with the investigation. He thought maybe we  
19 should have gone farther, but I went as far as I  
20 could, as far as I thought appropriate. And my  
21 investigation was of Eric Payne and, once I

1 determined that Eric Payne was okay, I had no  
2 reason to go farther, because it was beyond my  
3 jurisdiction, as I mentioned.

4 Q. Where did Mr. Graham want you to go, when  
5 you say farther?

6 MR. PARSONS: Object to form.

7 Q. You can answer the question.

8 A. I think he wanted me to talk to every  
9 single person that had anything to do with these  
10 bidders, like this Cornell Jones. I don't think I  
11 talked to him and Warren Williams and Warren  
12 Williams, Jr. I don't think he was happy that I  
13 didn't hassle these guys more than I did, because  
14 I went as far as I thought was appropriate and the  
15 rest of it was outside of my jurisdiction and  
16 also, to be honest with you, I was a little  
17 disgusted with Graham and I didn't want to  
18 continue to do something based on his political  
19 agenda, which I thought is why I ended up doing  
20 it.

21 Q. When you and Mr. Tseng met with

1 Mr. Graham, did Mr. Graham actually see the report  
2 of investigation?

3 A. I don't believe he did, but it's possible  
4 we gave it to him to read. It's possible. I  
5 wouldn't have given him a copy. I would have let  
6 him read it, but I don't remember specifically.

7 Q. Mr. Andary, to the extent that --

8 A. Let me go back. I don't think -- hold on  
9 one second. No, I didn't give him a copy of this  
10 memo or let him read it. I'm sure of that. No, I  
11 didn't let him read a copy of this.

12 Q. Now, I want to go back to this draft here.  
13 Was there -- at that particular stage and point,  
14 couldn't you have put confidential on it?

15 A. Well, I did on the memo.

16 MR. PARSONS: What are you referring to,  
17 Counsel, which Bates number?

18 MR. TEMPLE: 2045.

19 BY MR. TEMPLE:

20 Q. Couldn't you have put or stamped  
21 confidential on the August 4th, 2008 memo to

1 Angell and David Tseng instead of draft?

2 MR. PARSONS: Object to form.

3 A. I guess I could have, because I mention  
4 Graham in here. I note that Councilmember Jim  
5 Graham has to be briefed, but that doesn't reveal  
6 him as the source of information.

7 Q. I'm going to go back to the Freedom of  
8 Information Act issue and the indication that, if  
9 you transmitted, and I'm trying to follow your  
10 thinking, if you transmitted this document on  
11 August 4th, this draft, it's the intention then,  
12 at that stage, not to be detectable?

13 MR. PARSONS: Objection to form.

14 A. Not detectable, not FOIA-able.

15 Q. FOIA-able, absolutely. But would it have  
16 been FOIA-able, at that particular point in time,  
17 if it was not stamped draft?

18 MR. PARSONS: Objection to form.

19 A. I'm no expert on the Freedom of  
20 Information Act. I know that was the practice in  
21 the OCFO sometimes.

1 Q. What's that?

2 A. To stamp documents as draft when they're  
3 purely internal because of the Freedom of  
4 Information Act or because somebody might give it  
5 out inadvertently, at least that was my  
6 understanding. But again, I'm speculating that  
7 that's why it said draft. It may have said draft,  
8 as I mentioned to you, because I wanted to get  
9 their reaction to it because it was a sensitive  
10 matter.

11 Q. There's two questions. Let me ask you the  
12 first question.

13 A. Sure.

14 Q. There's the Freedom of Information Act,  
15 which is designed to give information, in certain  
16 happenstance, to the public?

17 A. Yeah.

18 Q. Would you not be concerned if OCFO is  
19 circumventing access to otherwise public documents  
20 by stamping them draft?

21 MR. PARSONS: Object to form.

1 MR. TEMPLE: Noted. Thank you.

2 Q. You can answer the question.

3 A. I wouldn't be particularly concerned. I  
4 probably would have been happier if this memo did  
5 get out.

6 Q. But to the extent of the question, though,  
7 to the extent that this is an independence issue  
8 and OIO is conducting an independent  
9 investigation, why do you care what they think?  
10 Why do you care what Angell or David or Mr. Gandhi  
11 thinks for that matter?

12 MR. PARSONS: Object to form.

13 Q. Let's take them one at a time. Why do you  
14 care what Angell Jacobs thinks?

15 MR. PARSONS: Object to form.

16 A. She's my supervisor.

17 Q. Because she's your supervisor, does that  
18 mean she should influence --

19 A. There's no influence --

20 Q. Let me finish the question. Does that  
21 mean that you should care about what she thinks

1 about your findings in your investigation?

2 A. Well, yeah, she ought to be aware of them.  
3 If she thinks it's a stupid investigation and the  
4 findings were completely off base, I'd be  
5 concerned, yeah.

6 Q. Doesn't that compromise the independence  
7 then of OIO to the extent that you're conducting  
8 the investigation, she's the manager, you come up  
9 with the findings and she has some residual right  
10 to alter your findings?

11 MR. PARSONS: Object to form.

12 A. She doesn't. Well, she may think she does  
13 and, technically, she does since she's my  
14 supervisor, but -- I forget where I was going with  
15 this. If there was a problem with my  
16 investigation, I would want to know it. If I had  
17 done something boneheaded, I would want to know  
18 it.

19 Q. I appreciate that from your point of view  
20 in one respect, but is that not a structural  
21 problem in the OIO investigative structure, to the

1 extent --

2 MR. PARSONS: Object to form.

3 Q. -- to the extent that you're conducting an  
4 independent investigation and then you transmit an  
5 investigative finding, in draft, to your  
6 supervisor, who is not part of the OIO operation,  
7 and they have the right then to tell you that your  
8 findings are stupid or not complete or whatever.

9 MR. PARSONS: Mr. Temple, I'm going to  
10 object to form.

11 MR. TEMPLE: Your objection is noted.

12 MR. PARSONS: This has been asked and  
13 answered. It is compound. You're harassing the  
14 witness. I would note my objection.

15 MR. TEMPLE: Your objection is noted.

16 THE WITNESS: Should I answer?

17 BY MR. TEMPLE:

18 Q. Yes, please.

19 A. The structure, on paper and technically,  
20 did not give us the independence I would have  
21 preferred but, as I mentioned before, I tried to



1 be as independent as I could within the framework  
2 of the OCFO.

3 Q. All I'm asking is a simple question. If  
4 you have a final report, why is it that a final  
5 report is not transmitted to Angell, if she's your  
6 supervisor, rather than a draft report?

7 MR. PARSONS: Object to form.

8 A. Again, I don't know who put the draft on  
9 there. If it was me, it was because I valued her  
10 opinion on what I did and I wanted to run it by  
11 her and see what her opinion was.

12 Q. But she didn't have to sign off on your  
13 report?

14 A. Well, what I was doing here is, a pretty  
15 serious allegation against Graham had come up  
16 during the investigation, which was unrelated to  
17 Eric Payne except peripherally, because he was  
18 blaming Eric Payne for the genesis of this issue  
19 and I wanted to be sure. And again, I'm  
20 speculating, but I wanted to be sure that she was  
21 okay with me saying, I'm not going to do this

1     anymore, because I was disgusted with Graham, and  
2     I've already exonerated Payne and it's possible  
3     she would have been looking at it and say, boy, I  
4     think you should continue looking at this whole  
5     issue or I may have wanted to know if she wanted  
6     me to transmit it to the IG. But again, I don't  
7     know, but that may account for me putting draft on  
8     that because, depending on what she said, I may  
9     have done other things.

10        Q. Let me direct your attention to 2046.

11        A. Yes.

12        Q. Notably, this document and 2041 are dated  
13     July 29th, 2008.

14        A. Uh-huh.

15        Q. Now, do you see any difference between the  
16     signatures here? This is also your signature;  
17     isn't that right?

18        A. Yeah, I do see differences. There are  
19     differences.

20        Q. There are differences?

21        MR. PARSONS: May I clarify, differences

1 between what and what?

2 A. Between the signature on 2046 and my  
3 signature on 2041.

4 Q. But they were both signed on the same  
5 date; is that correct?

6 A. I don't know.

7 Q. Well, this is dated July 29th. I'm merely  
8 trying to understand why there are two documents  
9 that have the same dates and this document, 2041,  
10 has a final signature on it, right?

11 MR. PARSONS: Object to form.

12 A. 2041 has my signature.

13 Q. And 2046 also has your signature?

14 A. Correct.

15 Q. Is there a reason why you would have  
16 signed two different documents on the same day?

17 MR. PARSONS: Object to form.

18 A. Well, they are different, as you see, the  
19 two documents are different, but just because it  
20 has that date, it may have been I was just too  
21 lazy to change it and just ran it off on my

1 computer. I mean, it was in my word file and it  
2 would have had that date on it and, if I changed  
3 it later -- I obviously didn't go back and change  
4 the date.

5 Q. Did Angell or David Tseng communicate  
6 with you regarding 2046 through 2049, the  
7 so-called draft report?

8 MR. PARSONS: Object to form.

9 A. The only thing we discussed after that was  
10 briefing Graham and, whether or not, how to handle  
11 the Inspector General, whether to send it to him  
12 or not.

13 Q. Do you recall any communication with  
14 anyone between the point that 2046 through 2049  
15 was prepared and the point that 2041 through 2044  
16 was prepared?

17 MR. PARSONS: Object to form.

18 A. Okay. It's my belief you're asking, the  
19 difference between the one that is marked draft  
20 and the other one that isn't marked draft,  
21 whether I had any discussion between those two

1 events?

2 Q. Yes.

3 A. I don't recall any, no.

4 Q. Now, I'm going to direct your attention to  
5 page 2046.

6 A. Yes.

7 Q. First paragraph.

8 A. Yeah.

9 Q. The sentence, moreover, the investigation  
10 revealed how highly politicized the lottery  
11 contract has become and revealed inappropriate  
12 actions by Mr. Graham with respect to the  
13 council's consideration of the lottery contract.  
14 That language is not in 2041 or the July 29th,  
15 2008 document, that is not marked draft.

16 MR. PARSONS: Object to form.

17 Q. Do you know why that is?

18 A. No, I don't.

19 Q. Do you recall removing that language from  
20 that particular document?

21 A. No, I don't.

1 Q. Do you know why it was removed?

2 A. Nope.

3 Q. You thought, though -- you felt strongly  
4 about the language that is on 2046 that is not now  
5 in 2041; is that correct?

6 MR. PARSONS: Object to form.

7 A. I wouldn't say I felt strongly about the  
8 language. I felt strongly about my opinion, but  
9 the language, itself, I don't know if I have any  
10 feelings one way or the other.

11 Q. But your opinion is reflected in the  
12 language?

13 A. Correct, the language on 2046.

14 Q. How did you -- did anyone else have a copy  
15 of this document before -- who prepared this  
16 document for you?

17 A. I did.

18 Q. Did you type it?

19 A. Yes.

20 Q. Did you send it to anybody in an  
21 electronical draft form?

1           A. I don't think I did, no, but I don't  
2 recall. I would have put a copy in the file,  
3 obviously.

4           Q. How about electronic file?

5           A. Electronically to the file?

6           Q. Yes. In other words, you typed this in  
7 Word, presumably?

8           A. Yeah.

9           Q. Would you have had this on your computer  
10 in Word?

11          A. Yes.

12          Q. Who would have been able to access the  
13 information?

14          A. On my computer?

15          Q. Yes.

16          A. It would have been just me, but I guess  
17 the network administrator could always get in  
18 there.

19          Q. Let me direct your attention to 2047, last  
20 sentence on that particular page, which is under  
21 Investigative Findings, and it reads: "Therefore,

1     it appears that Graham did not reveal to me that  
2     his suggestion to Eric Payne to call Ms. Wade was  
3     motivated by Graham's opposition to the W-2I  
4     contract award. Graham seems not to want to  
5     appear to be involved in behind-the-scenes efforts  
6     to derail the contract of W-2I, when in fact  
7     Graham is using the controversy to promote his own  
8     political agenda. (See finding 3 below.) This  
9     also suggests a motive for Graham asking for  
10    confidentiality in the matter. Although Graham  
11    already discussed the matter with Dr. Gandhi,  
12    Graham now wants to act behind the scenes to bring  
13    additional pressure to those responsible for the  
14    lottery contract award." That language also does  
15    not appear in the document that is not marked  
16    draft.

17           MR. PARSONS: Object to form.

18           Q. Do you know why that is?

19           A. I don't know why.

20           Q. Do you recall removing that language from  
21    this document?



1 A. No, I don't.

2 Q. Let me direct your attention to paragraph  
3 two, on page 2048.

4 A. Paragraph number two?

5 Q. Number 2.

6 A. Got you.

7 Q. And by comparison to page 2043, paragraph  
8 two, the last sentence on 2048 reads as follows:  
9 "One must question Graham's motives in complaining  
10 to the head of Payne's agency, based solely on an  
11 assumption that was based solely on a coincidence  
12 in timing." That sentence was removed in the  
13 nondraft Report of Investigation?

14 MR. PARSONS: Object to form.

15 Q. Do you know why that is?

16 A. No.

17 Q. Do you recall removing that particular  
18 sentence?

19 A. No, but that doesn't mean, of course, that  
20 I didn't. I just don't have a specific  
21 recollection.

1 Q. But you were the specific person who  
2 penned this report; is that correct?

3 A. That's correct.

4 Q. Let me direct your attention to page 2049.

5 A. Okay.

6 Q. Paragraph beginning with Graham and ending  
7 with wanted --

8 A. Okay.

9 Q. -- can you read that into the record,  
10 please?

11 A. Read the whole thing?

12 Q. Yes.

13 A. "Graham talked about how Warren Williams  
14 has all the good real estate deals. Graham also  
15 talked about how it would take a lot to move him  
16 on the lottery contract issue. Graham told them  
17 the conversation is completely off the record and  
18 then said that if Warren Williams, Jr. would step  
19 off the WMATA contract, then Graham would be  
20 willing to get on board with the lottery contract.  
21 Alaka Williams told me that Williams had two

1 contracts at the same time, a contract with WMATA  
2 to develop property around the Metro station in  
3 Graham's ward and the lottery contract. Graham  
4 was trying to negotiate with Williams to back off  
5 the WMATA contract so Graham could rebid the  
6 contract and another one of the bidders, who was  
7 Graham's favorite contractor, could get the  
8 contract. Graham said he talked to a lot of other  
9 people who were qualified for these contracts and  
10 they were not getting a chance. Williams told  
11 Graham that he'd already been awarded the  
12 contracts and the process had been fair and that  
13 Williams couldn't do what Graham wanted."

14 Q. And this is dated in conclusion fashion,  
15 that's your conclusion?

16 A. I'm reporting what the person told me.

17 Q. Did Graham tell you as follows: Quote  
18 unquote, if Warren Williams could step off the  
19 WMATA contract, then he would be willing to get on  
20 board with the lottery contract?

21 A. Graham didn't say that. That came from

1 one of the witnesses.

2 Q. Okay. So that's not -- okay. This  
3 paragraph on page 2049, in the draft report, does  
4 not appear on page 2044 in the nondraft report.

5 A. Right.

6 Q. Do you know why that is?

7 A. No. It would appear that I'm trying to  
8 downplay the part that is not directly relevant to  
9 Eric Payne. That's the way it looks.

10 Q. Did something happen, though, on July 29,  
11 2008 that caused you to remove the aforementioned  
12 provisions in the so-called draft memorandum?

13 MR. PARSONS: Object to form.

14 A. If I removed them, then definitely  
15 something caused it, but I don't recall what that  
16 something was. I can't recall. I didn't even  
17 realize there were differences here.

18 Q. I'm sorry. You said you didn't realize  
19 there were differences in it?

20 A. When I was looking at it, yeah.

21 Q. So is today the first time you realized --

1 first of all, is today the first time that you  
2 realized that there is a draft document and a  
3 nondraft document?

4 MR. PARSONS: Object to form.

5 Q. You can answer the question.

6 A. Well, I believe I would have known at the  
7 time. It's just that you're showing me these  
8 documents almost four years later and, you know, I  
9 didn't catch it at first that there were  
10 differences.

11 Q. Is today -- when you say -- is today the  
12 first time you're realizing that these two  
13 documents that you prepared are different based on  
14 the provisions that I showed you?

15 MR. PARSONS: Object to form. He's  
16 answered that.

17 A. Well, I repeat, obviously, if I took these  
18 things out, I realized at the time. I just didn't  
19 realize here, in February of 2012, that we had two  
20 separate documents here. They look the same upon  
21 first glance. They look the same, but you're

1 right, there's differences.

2 Q. Did anybody else in your office, by way of  
3 any other investigators, chiefs, work on this  
4 particular investigation?

5 A. I'm thinking, if you just give me a  
6 moment. I don't believe that anyone else did  
7 except perhaps my administrative assistant may  
8 have helped me on things of form and things like  
9 that.

10 Q. Who is that?

11 A. Well, this is embarrassing, I can't think  
12 of her name right now. Her name doesn't come to  
13 me, I'm sorry.

14 Q. As we speak today, do you have any  
15 recollection of taking these referenced quotes  
16 or -- excuse me, referenced statements out of the  
17 draft report and preparing a different report  
18 without them in it?

19 MR. PARSONS: Object to form.

20 A. I don't have recollection of it, but on  
21 the other hand, it appears that's what I did.

1           Q. Is it possible that anyone else could have  
2 done this?

3           A. I guess if you're just talking possible as  
4 opposed to probable, I left my electronic files on  
5 my computer when I left and I did that for my  
6 successor, for his convenience, and I don't know  
7 what happened to them after that. You know, I  
8 can't control that, but my Word files were intact  
9 when I left.

10           MR. PARSONS: I object to the speculation.

11           Q. David Tseng made a complaint to OIO about  
12 Eric Payne relative to certain legal contracts,  
13 are you aware of that?

14           MR. PARSONS: Object to form.

15           A. I'm aware of the complaints. My  
16 recollection is that they came from Charlie  
17 Barbera, not from David Tseng. I can't say for  
18 sure.

19           Q. But it didn't come from Barbera at the  
20 insistence of Tseng?

21           A. Well, Barbera was a funny guy. I don't

1 think he would have hesitated to tell me directly.

2 Q. Did he -- what did Barbera complain about?

3 A. Now that you mention it, I'm wondering  
4 whether it came from Eric Payne or Joe Giddis  
5 instead of Barbera, because that would have been  
6 more logical because Payne was complaining that  
7 the General Counsel had taken away some of the  
8 contracts that should have been rightfully his.  
9 Now I'm thinking it was Joe Giddis that was in  
10 place at that time, but it may have been Eric.

11 Q. Actually, Payne was in place, Payne was  
12 the contracting officer at that time.

13 A. He was, but he hadn't been informally  
14 demoted at that time?

15 MR. PARSONS: Object to form.

16 Q. No, he had not been demoted at that time.

17 A. Now, on the other hand, it could have been  
18 Barbera complaining that Payne was trying to go  
19 over their heads with the contracts, themselves,  
20 when General Counsel felt that they were  
21 responsible.



1 MR. PARSONS: I'd just like to, for my own  
2 sanity, I would appreciate if we would go back to  
3 the question and answer format.

4 MR. TEMPLE: I don't think I understand.  
5 Is that an objection?

6 MR. PARSONS: I just feel like we're being  
7 a little too conversational. I prefer that we go  
8 back to the question and answer format.

9 THE WITNESS: I just volunteered that.

10 MR. PARSONS: So that I would have the  
11 opportunity to object, if necessary.

12 THE WITNESS: Okay.

13 BY MR. TEMPLE:

14 Q. Were you aware that Mr. Payne raised an  
15 issue about this OGC contracting issue in  
16 conversations with Investigator Pendleton?

17 MR. PARSONS: Object to form.

18 Q. Prior to Mr. Tseng actually making the  
19 complaint to OIO?

20 MR. PARSONS: Object to form.

21 A. I don't recall that, but whatever

1 Pendleton says, his recollection is probably more  
2 accurate than mine.

3 Q. Now, the issue that Mr. Barbera complained  
4 to you about, do you recall that?

5 A. Well, again, you're assuming it was  
6 Barbera.

7 Q. You told me it was Barbera.

8 A. I said it could have been.

9 Q. So what was the issue?

10 A. The issue was that General Counsel was  
11 getting contracts for legal work directly through  
12 General Counsel and not through the contracting  
13 officer and that led to tension between the two  
14 offices and whether it was Payne complaining about  
15 the General Counsel doing it or whether it was the  
16 General Counsel complaining that Payne was trying  
17 to run that, I don't recall, but that was the gist  
18 of the complaint.

19 Q. I just want to visit that for a short  
20 period of time. To the extent that it was a  
21 contract issue, was it a policy in OCFO that says

1     that contractual procurement issues should be  
2     determined by the contracting officer versus the  
3     General Counsel?

4             MR. PARSONS:   Object to form.

5             Q.   You can answer the question.

6             A.   My recollection is that there was an order  
7     from the Chief Financial Officer delegating the  
8     authority to do these legal contracts through the  
9     General Counsel and, therefore, they seemed to be  
10    in their right to be doing it but, generally, the  
11    policy was that the contracting officer handled  
12    it.

13            Q.   To that extent, in a situation like that,  
14    to the extent that there are potential ethical  
15    overtones in terms of conflicts of interest, would  
16    that be something within the purview of OIO?

17            MR. PARSONS:   Object to form and  
18    speculation.

19            Q.   You can answer the question.

20            A.   If there was a violation of our standard  
21    of conduct, yeah, it would be, but I don't see the

1 ethical issue unless we're talking legal ethics,  
2 like, about the code of official responsibility or  
3 something like that. I didn't see anything wrong  
4 on either way. I thought it was a jurisdictional  
5 dispute that had to be handled by management.

6 They had to decide who's going to do what and, in  
7 my view, if the contracting officer wanted to do  
8 it, he should have made his case to the CFO, and  
9 it appeared that the General Counsel had already  
10 done that and gotten an order from them. That's  
11 my recollection.

12 Q. Now, when an issue comes to your office  
13 and reaches a point of a formal complaint --

14 A. Yes.

15 Q. -- reaches that stage, do you have a  
16 communication with Angell or Mr. Gandhi to say  
17 this should not be a complaint, it should be a  
18 policy issue and it should be resolved  
19 accordingly?

20 MR. PARSONS: Object to form.

21 A. Well, you can complain about anything. I

1 wouldn't have objected to the fact that there was  
2 a complaint. I would have objected to having an  
3 investigation of the matter.

4 Q. Did you have a discussion with Angell to  
5 that effect?

6 MR. PARSONS: Object to form.

7 A. I don't recall one and I'm not even sure  
8 she was aware of it.

9 Q. Well, shouldn't she have been made aware  
10 of something that has a policy overtone that  
11 resinated an investigative overtone?

12 A. Not necessarily. If it was a matter of  
13 little importance to me, i may not have raised it  
14 with her. On the other hand, I might have. I  
15 just don't recall, I'm sorry.

16 Q. Did you think it was a matter of little  
17 importance?

18 A. Eventually, yes. I may have even stopped  
19 the investigation. I'm not sure. But, to me,  
20 after getting, I guess, like a preliminary  
21 investigation and finding out about the OCFO order

1 or the CFO order, it seemed like a management  
2 issue, not an issue for me. I mean, I don't go  
3 around deciding who's got jurisdiction over what.  
4 That's not my function; that's the function of  
5 management.

6 Q. Did you actually have communication with  
7 Charlie Barbera?

8 A. I think I talked to him about it. I was  
9 thinking, originally, that that's where the  
10 complaint came from, but then I was thinking that  
11 maybe it was from Eric Payne. I don't know, but I  
12 do remember having some sort of conversation with  
13 Barbera.

14 Q. Did you know that on or around July 2nd,  
15 2008 that Mr. Payne was removed from his position?

16 A. I found out --

17 MR. PARSONS: Object to form.

18 A. I found out afterwards.

19 Q. And when did you find out?

20 A. I don't remember.

21 Q. Do you know how you found out?

1           A.   Either Angell told me or I heard it from  
2           one of the staff that had heard it and I think the  
3           latter is probably the most likely.

4           Q.   Did Angell ever have a communication with  
5           you regarding -- during the pendency of this  
6           investigation, regarding Jim Graham's concerns  
7           about Eric Payne?

8                     MR. PARSONS:   Object to form.

9           A.   Yeah.   I'm not sure I have the question  
10          correctly, but when you say Jim Graham's concerns  
11          about Eric Payne, you mean the investigation  
12          itself?

13          Q.   No, I don't mean the investigation itself.  
14          I'll rephrase the question.   During the pendency  
15          of this investigation, did Angell ever talk to you  
16          and tell you that Jim Graham had concerns about  
17          Eric Payne?

18          A.   Initially, that came from David Tseng and  
19          I don't remember that Angell got involved in  
20          transmitting that information to me, but she would  
21          have been aware of the investigation as it went

1     forth.

2           Q.   When you say it came from David Tseng,  
3     you're talking about the initial communication he  
4     had with you?

5           A.   Correct.

6           Q.   And was that limited to -- the complaints  
7     about Eric Payne, were they limited to the  
8     specific complaint that Mr. Graham made  
9     subsequently to you?

10           MR. PARSONS:   Object to form.

11           A.   Yes, I do not recall any other allegations  
12     or concerns by Mr. Graham, Councilmember Graham.

13           Q.   Traci Fuller, is that your --

14           A.   Yes, thank you, that was my administrative  
15     assistant the entire time I was there.

16           Q.   Did Traci Fuller have access to your  
17     files?

18           MR. PARSONS:   Object to form.

19           A.   I believe she did because, if I was on the  
20     road or I was in a meeting and I needed something,  
21     I would ask her to find it for me and tell me what



1 it was, especially my e-mails.

2 Q. I just have a few final questions before  
3 counsel asks you questions. I'm directing your  
4 attention to 2126 and 27.

5 A. Okay. I'm looking at it.

6 Q. Do you recognize this document?

7 A. I'm trying to find a date. Is there a  
8 date -- oh, 7-2-2008. No, I don't recall it  
9 offhand.

10 Q. Do you know why this document is included  
11 in your investigative report?

12 A. Was it in my report? I don't know that it  
13 was.

14 Q. It's part of your investigative report.

15 A. Or was it in the file?

16 Q. It's part of the investigative record,  
17 yes.

18 A. If it's in there, it's because it's  
19 background information and I included it so that I  
20 could use it in interviewing witnesses. It gave  
21 me background information. That's why it would

1 have been in there. It has names of individuals  
2 and, sort of, the chronology of the thing. It  
3 would have been just background information for  
4 me, yeah.

5 Q. Do you know if anybody gave that document  
6 to him?

7 MR. PARSONS: Object to form.

8 A. It's possible that I got it from Scott  
9 Bolden, but I don't know. I'd say that's the most  
10 likely thing, that Scott Bolden gave it to me.

11 Q. The source, the last sentence of the  
12 article, was published in the Washington Post by  
13 Yolanda Woodlee.

14 A. On May 3rd. Okay.

15 Q. That doesn't refresh your recollection?

16 A. No, but again, I would use this as  
17 background information in conducting interviews,  
18 to prepare me.

19 Q. How about 2029, "Something Up the Sleeve?"  
20 A Washington Post article, the D.C. Council's  
21 curious stalling of lottery contract, dated

1 June 28, 2008, page A14?

2 A. Page A14?

3 Q. A14 is the site. It's Bates 2129. Do you  
4 recognize this?

5 A. The date is June 28th.

6 Q. Yes.

7 A. I don't recognize it, but if this was in  
8 my file, I just tossed it in.

9 Q. And is that the same for 2130, "Fenty  
10 pulls back lottery proposal to keep it alive"?

11 A. Yeah, my answer would be the same. If  
12 this was in my file, it's because it had to do  
13 specifically with people that I talked to, such as  
14 Alaka Williams.

15 Q. Is that the same thing for 2132 and 33?

16 A. Yes.

17 Q. How about 2134?

18 A. If this was from my file investigation,  
19 yes, I ran it off and stuck it in there as  
20 background information.

21 Q. That would be 2134 through 36?

1 A. Correct.

2 Q. Let me direct your attention to the  
3 e-mails.

4 MR. PARSONS: Are you going to Exhibit 3,  
5 Counsel?

6 Q. Exhibit 3. You'll see e-mails there dated  
7 May 21st. There is a series of e-mails on this  
8 particular page, but I want to concentrate on the  
9 e-mail from Eric Payne to you, dated Wednesday,  
10 May 21st, 2008 at nine o'clock.

11 MR. PARSONS: Counsel, can you direct me  
12 to the page?

13 THE WITNESS: It's this one. I see it.

14 BY MR. TEMPLE:

15 Q. Payne writes to you, cc'd to Lundquist,  
16 and he says, "I'd like to discuss the  
17 investigation of Mike Teller and the IT contracts,  
18 which I requested and initiated over a month ago,  
19 when you have an opportunity." And you respond on  
20 the same day.

21 A. Is that the one above it?

1 Q. May 21st, 2008 at 9:33, copied to  
2 Mr. Fultz. "Eric, we'd be happy to discuss this  
3 matter with you. I've turned it over to Butch  
4 Fultz to handle. Please call him. He's expecting  
5 your call." What happened to that investigation  
6 after that point; do you know?

7 MR. PARSONS: Object to form.

8 A. It wasn't seen through to a conclusion is  
9 my recollection.

10 Q. Do you know why that is?

11 A. I believe it's because we found out that  
12 IG was conducting a similar investigation and we  
13 would defer to the IG on that but, again, that's  
14 my belief, but I'm not positive on that.

15 MR. TEMPLE: Just give us a few minutes.

16 (Brief recess.)

17 MR. TEMPLE: Just a couple of questions.

18 BY MR. TEMPLE:

19 Q. Those signatures on those two different  
20 reports, the draft report on 2046 and the report  
21 at 2041, those are your signatures?

1           A.   Yeah.

2           Q.   Number two, did you -- are there  
3           circumstances where you actually refer matters to  
4           the Department of Justice for investigative  
5           reasons?

6           A.   Not to the Department of Justice, no.

7           Q.   Other than IG, where would you refer a  
8           matter to if you thought it was criminal in  
9           nature?

10          A.   If something was clearly criminal, I would  
11          probably coordinate with the IG on referring it to  
12          the U.S. Attorney's Office. I have directly gone  
13          to the U.S. Attorney's Office and reported  
14          allegations, but only after notifying the IG's  
15          Office.

16          Q.   So you didn't take the IG's lead?

17          A.   No. I tell them I got this and I think it  
18          should go to the Assistant U.S. Attorney, but I  
19          guess I would be following their lead. If they  
20          said no, I would discuss it with them. But I know  
21          we had some cases where we did an investigation

1 and we did everything. It was ready to go. You  
2 could take it right to the grand jury.

3 Q. Did you ever communicate with Mr. Graham  
4 about your concerns about what you learned in this  
5 investigation?

6 A. No.

7 Q. How about anybody in the Counsel's staff?

8 MR. PARSONS: Object to form.

9 A. The thing about the metro?

10 Q. Yes.

11 A. No.

12 Q. How about Dave Tseng?

13 MR. PARSONS: Same objection.

14 A. Yes, he knew.

15 Q. Was that a meeting between you and  
16 Mr. Tseng where that was discussed?

17 A. Well, he got the final memo.

18 Q. I understand, but subsequent to the  
19 receipt of a final memo, did you ever meet with  
20 him and say, hey, David, this is a problem and I'm  
21 concerned about it?

1 A. We discussed it, yeah.

2 Q. Do you recall what David stated in  
3 response?

4 A. Pretty much, yeah.

5 Q. What did he say?

6 A. Well, prior to me meeting with Graham, it  
7 was all set up and we were going into it and I  
8 mentioned to him that I was going to raise this  
9 with Graham and I was going to tell him I thought  
10 it was inappropriate, I guess. But I definitely  
11 told David I was going to raise it and he got very  
12 upset and concerned and didn't want me to discuss  
13 it. And I said, well, you know, I think I have  
14 to, and he went to Angell and raised it with her  
15 and both of them were adamant that I not discuss  
16 it with Graham.

17 Q. Did they say why?

18 A. No, but I assume it's because he's a  
19 powerful member of the council with jurisdiction  
20 over the CFO's Office, but they were very upset  
21 that I planned to discuss it. And they, on no



1 uncertain terms, told me I couldn't.

2 Q. After you met with Mr. Graham on or about  
3 June 26th or so --

4 A. No, you mean, interview him?

5 Q. Yes.

6 A. Go ahead, I'm sorry.

7 Q. After you met with him on June 26th and  
8 Tseng was with you at that time, right?

9 A. In the initial meeting with Graham, yes.

10 Q. Would you have continued to update  
11 Mr. Tseng on the progress of your investigation?

12 MR. PARSONS: Object to form.

13 A. Not necessarily. If he asked, I might  
14 tell him where we were.

15 Q. Did he make any inquiries after that  
16 meeting with Mr. Graham about the status of your  
17 investigation?

18 A. I don't recall that he did, but he could  
19 have. I think it would be more Angell that would  
20 do that, but I don't know. I'm speculating again.

21 Q. Do you recall whether Angell inquired?

1           A.   No, I don't recall.

2           Q.   Did you ever have a view as to whether  
3   Mr. Graham's actions came close to violating the  
4   law?

5           MR. PARSONS:   Object to form.

6           A.   I think it was possible that it did, yeah.  
7   I didn't do a detailed analysis of it, but there's  
8   a lot of law surrounding procurement and the fact  
9   that he was on the board, it had overtones of play  
10   to pay; and although I didn't analyze it from that  
11   point of view, I thought it was important for the  
12   Inspector General to have a chance to look at it.

13          Q.   That was your expectation?

14          A.   Yes.   In fact, I say in my memo that we  
15   ought to refer it to the IG.

16          Q.   But you wouldn't have considered it  
17   appropriate at that time to go to the U.S.  
18   Attorney's Office?

19          A.   We wouldn't go directly to the U.S.  
20   Attorney's Office because it's not complete yet.  
21   Usually, you go there when you have good evidence

1 of a crime, so it had nothing to do with the U.S.  
2 Attorney at that point. It would have been the  
3 IG, anyway, that would have talked to them because  
4 it needed additional investigation.

5 MR. TEMPLE: Sir, it's your turn.

6 MR. PARSONS: It's my turn. All right.

7 EXAMINATION BY COUNSEL FOR THE DEFENDANTS

8 BY MR. PARSONS:

9 Q. Mr. Andary, are you aware of a report by  
10 the OIG that was released on January 20th of this  
11 year?

12 A. I read about it in the Post editorial, but  
13 that's my awareness of it.

14 Q. Could you describe your awareness from  
15 that editorial?

16 MR. TEMPLE: Objection.

17 A. They -- as I recall, the report of the IG  
18 found no criminal violation or violation of that  
19 nature by Graham but they thought it was highly  
20 questionable and I'm not sure if the IG said that  
21 the Metro Board should look at it, but the Metro

1 Board was discussed in there somewhere.

2 Q. That's all I was wondering on that. Could  
3 you go to Exhibit 2, please?

4 A. Yes.

5 Q. You testified earlier regarding a meeting  
6 with Gandhi on May 15, 2008. Do you have any  
7 specific recollection, other than what was shown  
8 to you in Exhibit 2 today, of such a meeting?

9 A. Hold on while I take a look at it. That  
10 was a breakfast meeting. I do recall that I met  
11 with him several times for breakfast, but I  
12 couldn't tell you what happened at this particular  
13 one or whether we even had it. Because sometimes  
14 it would be scheduled and I would get a call at  
15 the last minute saying that it would need to be  
16 rescheduled, but I did have meetings with him at  
17 the Old Ebbitt, yes.

18 Q. But you have no specific recollection  
19 whether you met with him on May 15, 2008?

20 A. No, but I wouldn't deny it.

21 Q. You testified earlier that -- or

1 Mr. Temple asked you earlier whether Mr. Payne  
2 complained to you about Mike Teller on May 15th,  
3 2008, you said that sounds about right. Do you  
4 have any specific recollection of Mr. Payne  
5 complaining to you on May 15, 2008 about  
6 Mr. Teller?

7 A. No.

8 Q. And similarly, looking at May 8th, 2008,  
9 the meeting that you testified was only about  
10 chartered schools, do you have any specific  
11 recollection of whether that meeting occurred?

12 A. Yes, I do. I can't vouch for the date,  
13 but I know that we did have a breakfast meeting  
14 with Tom Nida, the three of us.

15 Q. If you can turn to Exhibit 1 again. This  
16 is the report. Would it be fair to say that you  
17 referred to Exhibit 1 throughout this deposition  
18 for your answers?

19 A. Yes, right. From time to time, we've  
20 discussed various things in there.

21 Q. And you prepared Exhibit 1, correct?

1           A. The entire exhibit, no, I don't believe  
2           so. Some of these are things that were attached  
3           or in the file that were not prepared by me and  
4           some examples are some of these e-mails and some  
5           of these press articles that we talked about.

6           Q. Sure. Sure. Did you prepare, to the best  
7           of your knowledge, the memos in Exhibit 1 that  
8           bear your signature?

9           A. Yes, to my knowledge.

10          Q. And to the best of your knowledge, the  
11          memos are accurate?

12          A. Yes.

13          Q. You wouldn't deviate today from what's put  
14          into these memos in Exhibit 1; is that correct?

15          A. I would stand by them, if that's what you  
16          mean.

17          Q. And you testified that the signatures on  
18          page 2041 and 2046 were both your signatures,  
19          correct?

20          A. Yes. I don't think anybody else could  
21          duplicate that.

1 Q. Would you say the same with your signature  
2 on 2045?

3 A. Yes.

4 Q. And Mr. Temple discussed with you, at some  
5 length, that draft mark that's on 2045 and 2046;  
6 sitting here today, you have no reason to believe  
7 that you did not put that mark there, do you?

8 A. No, I don't.

9 Q. And sitting here today, would you agree  
10 that you forwarded the documents, 2046 through  
11 2048 or 2049, by way of the memorandum that is  
12 documented 2045, to Angell Jacobs and David Tseng;  
13 is that your recollection?

14 A. Well, it was my practice and it's  
15 definitely got a transmittal memo. Now, the  
16 transmittal memo appears to be attached to 2046,  
17 the memo there, and it's not attached to the one  
18 that does not have the draft stamp on it. But I  
19 would assume I kept it with it. I can't  
20 imagine -- I don't know. I don't know the answer  
21 to that question.

1           Q. Do you believe that you transmitted the  
2 documents, 2046 through 2049, to Angell Jacobs at  
3 some point?

4           A. Yes, I believe that.

5           Q. And you testified that was your common  
6 practice?

7           A. Well, it's addressed to her.

8           Q. So in this case, you believe it was  
9 transmitted to Angell Jacobs?

10           MR. TEMPLE: Objection. Asked and  
11 answered.

12           A. Correct, I do.

13           Q. And that was in conformance with your  
14 common practice, with transmitting investigations  
15 to her for her review if they were important  
16 enough?

17           MR. TEMPLE: Objection. Asked and  
18 answered.

19           A. Yes. The only thing that gives me pause  
20 is, usually, when I have multiple addressees, I  
21 will put a checkmark next to the name to whom it's



1 addressed. Like in this case, it would be two  
2 different memos, one going to David and one going  
3 to Angell, I think, and it's not through David or  
4 through Angell. I think, according to this, it  
5 would be two separate memos. But usually, I would  
6 put a checkmark. Like, if one went to Angell, I  
7 would check hers; and the one that would go to  
8 David Tseng, I would check that one; and I didn't  
9 in this case. I'm not sure why not.

10 Q. You testified that when someone came to  
11 OIO with a complaint that they could be  
12 confidential if they wanted to be; is that  
13 accurate?

14 A. Yes, but confidentiality is a liquid term  
15 because, if we were ordered by a court to divulge  
16 a name or something like that, we may have to do  
17 it. But to the extent that we would be able to  
18 keep the name confidential, yeah, we would.

19 Q. And did you also testify that even when  
20 someone asked to be confidential, you sometimes  
21 disclosed that information to management if there

1 was an issue you thought they needed to be aware  
2 of?

3 A. Sure, you can do that without disclosing  
4 the identity of the complainant.

5 Q. Do you ever recall Eric Payne asking you  
6 to remain confidential in any of your  
7 conversations with him?

8 A. No.

9 Q. You said that when you went in to brief  
10 Mr. Graham on the report, that you told David  
11 Tseng that you were going to criticize Mr.  
12 Graham's behavior, if that's a fair word; is that  
13 correct?

14 A. I did mention it to David because I knew  
15 how sensitive it was. Not so much criticize,  
16 maybe I said criticize, but it would be more of --  
17 well, it wouldn't be -- maybe I would have said  
18 criticize, but I don't know, but yeah, that's  
19 right.

20 Q. And you said that David Tseng and Angell  
21 Jacobs were upset by this; is that correct?

1 A. Yes.

2 Q. Why did you know they were upset?

3 A. They told me. Well, David acted upset  
4 when I told him I was going to do that and my  
5 recollection is that he said I couldn't do it and  
6 my belief was he's not my supervisor and I do not  
7 have to do what he says and then he went back to  
8 Angell and told her and she joined him in  
9 saying no. And I believe I also said -- or they  
10 volunteered to take it to Gandhi, if necessary;  
11 but I said okay, if that's the way you guys feel  
12 about it, and I didn't bring it up in the meeting.

13 Q. We talked about a complaint against Eric  
14 Payne that you concluded was a turf war, do you  
15 recall that?

16 A. Yes.

17 Q. Was it your testimony that that complaint  
18 did not come from David Tseng directly?

19 A. My recollection -- well, I think the  
20 e-mail showed that it came from Eric Payne, but my  
21 recollection was that it was Barbera that

1 initially raised it with me in a phone  
2 conversation, but now I'm not so sure. If Payne  
3 says he's the one that brought it to my attention,  
4 then I would go with that.

5 Q. You testified earlier to Mr. Temple that  
6 you did not think the investigation started by  
7 Mr. Payne involving Mike Teller was concluded; is  
8 that correct?

9 A. That's my belief, yes.

10 Q. And that was as of the time you left your  
11 position with the OCFO?

12 A. Correct.

13 Q. And what date was that again?

14 A. It was in October, and it was towards the  
15 middle of October.

16 Q. Of?

17 A. Of 2009. I don't remember the exact date,  
18 but it would be a matter of record.

19 Q. Was it the practice of OIO, during your  
20 time there, to draft a concluding memorandum  
21 whenever an investigation of that sort was

1 concluded?

2 A. We had two different ways of doing it. If  
3 it was something where we established a violation  
4 of something, where an administrative action or  
5 some sort of action was required, we would do a  
6 Report of Investigation and send it to the front  
7 office, or if it was something they just should be  
8 aware of, I would do that. But we also had a  
9 practice, if the complaint was not verified or  
10 substantiated, we could disclose it internally.  
11 We had a name for it. I forget, but we would do a  
12 memorandum that so and so made a complaint and it  
13 was not substantiated and, therefore, the file was  
14 closed and those we would not send forward,  
15 necessarily. Because we had so many  
16 investigations, we couldn't be sending every one  
17 when they weren't substantiated.

18 Q. And you would never write one of these  
19 case-closing memoranda if the investigation were  
20 not closed; is that correct?

21 A. Correct. But let me add, an investigation

1 is always subject to being reopened and I might  
2 prepare a Report of Investigation and, later, more  
3 information comes to my attention and then I  
4 reopen it.

5 Q. But if there were a case-closing  
6 memorandum for this Mike Teller investigation,  
7 would it be your testimony that according to the  
8 practice at the OIO that the investigation was  
9 closed?

10 A. If there was a closing memo?

11 Q. Yes.

12 A. Yeah. I don't remember that it was  
13 closed. Well, it was closed to my recollection,  
14 but that would have been the final thing, if you  
15 ask me. Maybe it was resurrected later after I  
16 left. I don't know.

17 Q. What was your recollection about it being  
18 closed?

19 A. My recollection is that I was at the firm  
20 belief that this was a management issue to be  
21 settled by management and not appropriate for OIO

1 investigation.

2 Q. And it is your recollection that, at the  
3 time you made that conclusion, that the case was  
4 then closed?

5 A. I'm not sure that was the reason it was  
6 closed. Yeah, you're right. I don't remember  
7 specifically but I would have tried to close it, I  
8 believe.

9 Q. Do you have any specific recollection of a  
10 meeting with Dr. Gandhi on April 17th, 2008?

11 A. There's no way I could remember a specific  
12 meeting on that day and I don't see it in his  
13 calendar. It's not included, so I just don't  
14 know.

15 Q. But you have no specific recollection?

16 A. No, I don't.

17 Q. Do you have a specific recollection of any  
18 contact, through meeting, e-mail, phone or  
19 otherwise, with Eric Payne on April 10th, 2008?

20 A. I have recollections of meeting with Eric  
21 Payne on several occasions, but I couldn't give

1     you an exact date.

2           Q.   So you have recollections of meeting with  
3   Eric Payne, but you have no specific recollection  
4   as of April 10, 2008?

5           A.   To that date, no.  I don't deny it.  If  
6   you have information that I did, I would not deny  
7   it.

8           Q.   Do you recall a meeting with Eric Payne on  
9   June 12th, 2008?

10          A.   My answer would be the same.

11          Q.   Do you ever recall telling Eric Payne that  
12   any of the investigations that Mr. Payne initiated  
13   had been reported to Dr. Gandhi?

14          A.   I don't have a specific recollection of  
15   it.  I don't know why I would tell him that.  But  
16   if I did report it to Dr. Gandhi, I wouldn't  
17   necessarily say it came from Eric Payne.  I would  
18   just say this is something we've learned and we're  
19   investigating it.

20          Q.   So you have no specific recollection of  
21   telling Eric Payne that you reported any of his



1 complaints to Dr. Gandhi?

2 A. No, but there's a very strong likelihood  
3 that I would have, because my job was to keep  
4 Gandhi informed of problems and -- but whether I  
5 would say, in making such a report, that it came  
6 from Eric Payne, I doubt it.

7 Q. So you believe there was a strong  
8 likelihood that you would have reported Eric  
9 Payne's complaint to Dr. Gandhi, but you don't  
10 believe you would have revealed his identity?

11 A. That's my general practice. I don't have  
12 a specific recollection of it. I don't even have  
13 a recollection of reporting it to Gandhi, but what  
14 I would do routinely is just brief him on some of  
15 the important things we were doing and just tell  
16 him and, if he was interested, I would give him  
17 more detail or, otherwise, I would just go over  
18 it. He was most interested in our audits, because  
19 they revealed weaknesses in the system and,  
20 generally, he wasn't that interested in  
21 investigations unless it showed a systematic

1 weakness, such as something which allowed someone  
2 to embezzle money and steal money.

3 Q. As to the other half of my initial  
4 question, do you have any specific recollection of  
5 telling Eric Payne about any of your reports to  
6 Gandhi in whatever fashion?

7 A. No specific recollection there.

8 Q. Do you have a general recollection?

9 A. Of telling Eric that I reported something  
10 to Dr. Gandhi?

11 Q. Yes.

12 A. No, I don't have a specific recollection.

13 Q. The question is: Do you have a general  
14 recollection?

15 A. I thought I saw something in the e-mails  
16 about that.

17 Q. Can you indicate where?

18 A. I'm looking. Well, on Friday May 23rd, I  
19 sent -- no, this is from Eric Payne. But it says,  
20 I'd like to discuss this e-mail, the recent report  
21 from OIO to Dr. Gandhi about procurement and how

1 IM Office can work with OIO and et cetera; that  
2 indicates that he was aware of a report from OIO  
3 to Dr. Gandhi.

4 Q. And that was on May 23rd, 2008?

5 A. Right.

6 Q. Not on June 12th?

7 A. Oh, that's what you were specifically  
8 interested in? I thought you asked about a  
9 general recollection.

10 Q. Other than that e-mail -- I'll let you  
11 review the rest of the e-mails.

12 A. I don't see it.

13 Q. So other than that e-mail, you don't have  
14 any recollection of telling Eric Payne about  
15 reporting any of his complaints to Dr. Gandhi?

16 A. No, I don't.

17 Q. Now, throughout your talk with Mr. Temple,  
18 you speculated at length about various actions  
19 about Councilmember Graham; is that fair?

20 MR. TEMPLE: Objection.

21 Mischaracterization and form.

1 A. That's correct.

2 Q. And this was regarding the actions which  
3 are the subject of the reports, the final report  
4 that is Bate stamped 2041 through 2044, correct?

5 MR. TEMPLE: Objection.

6 A. Yes.

7 MR. TEMPLE: Are you stating that the  
8 report is speculative?

9 MR. PARSONS: No.

10 THE WITNESS: Could you repeat the  
11 question? I'm sorry, I was looking at these  
12 documents because it goes through 2049.

13 BY MR. PARSONS:

14 Q. Well, just to point out, 2041 through 2044  
15 appears to be the final report; whereas, 2045  
16 through 2049 contains a draft, correct?

17 A. Well, it's stamped draft, yes.

18 Q. And to come at my question from a  
19 different way. When we discussed the actions of  
20 Councilmember Graham today, these are the same  
21 actions that are reported on this final report;

1     that is, 2041 through 2044, in general; is that  
2     correct?

3             A.   Yes.

4             Q.   And to the extent that you thought any of  
5     Councilmember Graham's actions were worthy of your  
6     investigation, you would have put those actions in  
7     that report; is that correct?

8             A.   I may be misunderstanding your question  
9     but, I believe, I said in these memos that further  
10    investigation of this metro incident or contract  
11    incident was not in my jurisdiction.

12            Q.   And did you also say on 2044 that there  
13    was no clear violation of any criminal statutes?  
14    It's the second line.

15            A.   Correct.

16            Q.   And would you stand by that  
17    characterization today?

18            A.   Well, the fact that there was no clear  
19    violation, I didn't research it to determine what  
20    a violation might be, whether it was some sort of  
21    procurement violation, and some of the procurement

1 laws I believe have criminal aspects to them, but  
2 it didn't strike me, just on its face, as being  
3 criminal, no.

4 Q. So you didn't find any violation of a  
5 criminal statute yourself?

6 MR. TEMPLE: Objection.

7 A. I didn't attempt to.

8 Q. And as of today, you have not had any  
9 reason to change that opinion?

10 A. Well, I really hadn't thought about it  
11 since I did this, since I left, as far as trying  
12 to analyze it, so I would still be of that  
13 opinion.

14 MR. PARSONS: I believe I could turn it  
15 over to you. I would like to ask, on the record,  
16 if, when you prepare this, you could mark the  
17 entire deposition as confidential. I understand  
18 that there are some parts that are not, but I  
19 think the best way to go about it is to mark it  
20 all confidential and then counsel could look at  
21 certain parts and designate those parts that are

1 not confidential and then get a revision.

2 MR. TEMPLE: I certainly am going to  
3 object to that. I clearly delineated my  
4 questioning to ensure that the first part of this  
5 deposition is not confidential, so I don't think,  
6 that until we look at it, that we have to make any  
7 designation. The final deposition will reflect  
8 that.

9 MR. PARSONS: I agree that you delineated  
10 and certain parts were not confidential and I'll  
11 agree to those parts when we determine what they  
12 are, they will not be confidential. I'm just  
13 concerned because, after we made the standing  
14 agreement, we went in and out of the various  
15 confidential topics throughout the course of the  
16 deposition and I want to make sure that nothing  
17 gets out that is in fact confidential. So I'd  
18 ask, as a preliminary matter, that we mark it  
19 confidential and you can call me at any time and  
20 we can talk about what's not confidential and get  
21 it appropriately marked.

1 MR. TEMPLE: I just don't think it's  
2 necessary at this time. It's not going to be  
3 going anywhere. It's not a final deposition. So  
4 I mean, we're going to object to that. When we  
5 have a final deposition, we can have an  
6 appropriate discussion.

7 MR. PARSONS: We can discuss this further,  
8 I suppose, at a later date, but go ahead and ask  
9 your final questions so that we can let Mr. Andary  
10 go.

11 MR. TEMPLE: I just have one final  
12 question.

13 FURTHER EXAMINATION BY COUNSEL FOR THE PLAINTIFF  
14 BY MR. TEMPLE:

15 Q. That is the issue of the checkmark that  
16 you mentioned and I was trying to follow the line  
17 of questioning. I'm not clear. Are you saying,  
18 when you deliver the memo in final form, if it's  
19 to more than one party, you check the names on the  
20 document with your handwritten checkmark?

21 A. Yes, as to each copy, addressee one, I



1 would check their copy next to their name.

2 Q. In that respect, what you're saying is, it  
3 would be two copies if it went to more than one  
4 person?

5 A. Normally, yes.

6 Q. And each copy would have a check next to  
7 the name, subject to the person that's actually  
8 the receiver?

9 A. Correct.

10 Q. So in this particular case relative to the  
11 draft document, which is 2045, you're saying there  
12 should be two separate draft memos?

13 A. Normally, yeah. If it's got two  
14 addressees, there ought to be one for each  
15 addressee, but I notice in either one -- well,  
16 there's only one transmittal memo.

17 Q. And that's unusual?

18 A. No. I don't know which one goes with  
19 which, I wasn't part of --

20 Q. What do you mean, I'm sorry?

21 A. Whether the second, 2045, I would have, I

1 would think, I would have recopied it for this  
2 2041.

3 Q. So there should be a document similar to  
4 2045, a transmittal memo that's not marked draft,  
5 accompanying what's otherwise in 2041 and 2044?

6 A. I would think, yes.

7 Q. Is it possible that you transmitted this  
8 -- had a conversation -- let me rephrase that.  
9 Did you transmit this document to Angell and to  
10 David, have a conversation with them and they  
11 suggested changes and you just made the changes  
12 and then you hand-delivered it to them?

13 A. It is possible but, you know, possible is  
14 a pretty broad term.

15 Q. That's why I changed it and said, did you  
16 do that?

17 A. Did I do it? Not that I recall.

18 Q. You cannot recall why one document --  
19 recall, with specificity, why one document says  
20 draft, dated the same day, and one document does  
21 not say draft?

1 MR. PARSONS: Objection. I think we've  
2 gone over this.

3 A. I didn't notice it until it was pointed  
4 out to me in this deposition.

5 MR. TEMPLE: I have no further questions.  
6 Do you want to read --

7 MR. PARSONS: Let me just go over one more  
8 thing to solve the mystery of the checkmarks.

9 FURTHER EXAMINATION BY COUNSEL FOR THE DEFENDANTS  
10 BY MR. PARSONS:

11 Q. Do you recall, if at all, that when you  
12 would create a transmittal memo, you would make a  
13 copy for each person you transmitted the memo to,  
14 correct?

15 A. Yes, that was my practice.

16 Q. And then you would put a checkmark next  
17 to, for example, Angell Jacobs, and then give that  
18 copy to her, correct?

19 A. Right.

20 Q. And to David Tseng, you would put a  
21 checkmark there and give that one to him?

1           A.   Correct.

2           Q.   And then, if you wanted to keep a copy for  
3   the file, would you potentially make a third copy  
4   that didn't have any checkmarks and you would just  
5   put it in the file?

6           A.   Yes.

7           MR. PARSONS:   Nothing further.

8           (The deposition concluded at 5:14 p.m.)  
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CERTIFICATE OF DEPONENT

I hereby certify that I have read and  
examined the foregoing transcript, and the same is  
a true and accurate record of the testimony given  
by me.

Any additions or corrections that I feel  
are necessary, I will attach on a separate sheet  
of paper to the original transcript.

\_\_\_\_\_

Robert Andary

Dated \_\_\_\_\_

CERTIFICATE OF NOTARY PUBLIC

I, Kelly Susnowitz, the officer before whom  
the foregoing deposition was taken, do hereby  
certify that the witness whose testimony appears  
herein was duly sworn by me; that the testimony of  
said witness was taken by me in shorthand and this  
transcript typed under my direction; that said  
transcript is a true record of the testimony given  
by said witness; that I am neither counsel for,  
related to, nor employed by any of the parties to  
the action in which this deposition was taken;  
and, further, that I am not a relative or employee  
of any attorney or counsel retained by the parties  
hereto, nor financially or otherwise interested in  
the outcome of the action.

\_\_\_\_\_  
Notary Public in and for the  
District of Columbia

My commission expires:

June 13, 2012

DEPOSITION OF ROBERT ANDARY  
CONDUCTED ON 2/10/2012

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